

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NOS. 498 & 385 OF 2022.

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CRIMINAL WRIT PETITION NO.498/2022.

Smt. Neeta wd/o Bhupendra Khara,
aged 63 years, Occupation – Household,
resident of Nandanvan Aajma Layout,
Ganesh Nagar, Near Digambar Jain
Temple, Nagpur, Taluq and District
Nagpur.

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PETITIONER.

VERSUS

1.Umesh s/o Ratanlal Jakhotiya,
Aged 42 years, Occupation – Business,
resident of Geeta Nagar, Akola,
Taluq and District Akola.

2.Santoshkumar Mohanlal Agrawal,
Aged 65 years, Occupation Pensioner,
resident of Vrundavan Nagar,
Sudhir Colony, Akola,
Taluq and District Akola.

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RESPONDENTS.

Mr. N.L. Jaiswal, Advocate for the Petitioner.
Mr.S.A. Mohta, Advocate for Respondent No.1.
Mr.P.J. Mehta, Advocate for Respondent No.2.

CRIMINAL WRIT PETITION NO.385/2022.

Santoshkumar Mohanlal Agrawal,
Aged about 65 years, Occupation Pensioner,
resident of Vrundavan Nagar,
Sudhir Colony, Akola,
Taluq and District Akola.

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PETITIONER.

VERSUS

1.Umesh s/o Ratanlal Jakhotiya,
Aged 42 years, Occupation – Business,
resident of Geeta Nagar, Akola,
Taluq and District Akola.

2.State of Maharashtra,
through DGP Akola, Taluq and
District Akola.

3.Smt. Neeta Bhupendra Khara,
aged about 60 years, Occupation – Household,
resident of Nandanvan Aajma Layout,
Ganesh Nagar, Near Digambar Jain
Temple, Nagpur, Taluq and District
Nagpur.

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RESPONDENTS.

Mr.P.J. Mehta, Advocate for the Petitioner.
Mr.S.A. Mohta, Advocate for Respondent No.1.
Mr.H.D. Dubey, A.P.P. for Respondent No.2.
Mr.N.L. Jaiswal, Advocate for Respondent No.3.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 26, 2002.

ORAL JUDGMENT :

Heard learned Counsel for the parties. Considering the issue involved in these two Writ Petitions and by consent of the learned Counsel appearing for the respective parties, the same are taken up for final disposal by issuing Rule, making the same returnable forthwith.

2. Common challenge raised in both petitions is to the order of issuance of process dated 09.09.2021 passed by the Judicial Magistrate First Class, Akola in R.C.C.No.952/2021, along with the order of rejection of revision dated 14.03.2022 passed by the Additional Sessions Judge, Akola in Criminal Revision No.101/2021.

3. Both petitions are filed separately by two accused challenging the same order of issuance of process. The petitioner – Neeta (in Writ Petition No.498/2022) is arrayed as accused no.1,

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whilst the petitioner Santosh (in Writ Petition No.385/2022) is accused no.2 in the concerned criminal case. The respondent Umesh Jakhotiya (original Complainant) has initially filed an application in terms of Section 156[3] of the Code of Criminal Procedure, seeking directions to register the offence against Neeta and Santosh for the offence punishable under Sections 406, 468, 471, 420 read with Sections 34 and 120B of the Indian Penal Code. The learned Magistrate vide order dated 09.10.2018 rejected the urge for action under Section 156[3] of the Code, however, treated the said application as a private complaint and further directed the police to investigate the matter and file enquiry report in terms of Section 202 of the Code.

4. In turn, the police have filed enquiry report. On that basis, the learned Magistrate thought it fit that there are sufficient grounds to proceed further and thus, process was issued against both accused for the offence punishable under Sections 406, 468, 471 read with Section 34 of the Indian Penal Code.

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5. The facts in brief are that the complainant – Umesh has purchased a piece of land i.e. Plot No.1 out of survey no.78/2 from one Dattatraya Giri under registered Sale deed dated 13.06.2008. When the complainant Umesh went to the revenue authorities for recording his name to the revenue records, he learnt from the revenue officer that name of accused Neeta has been entered to his plot, as well as Neeta has already sold the said plot to somebody else with the assistance of accused Santosh and one Thakare. It was the grievance of the complainant that though he is registered owner of plot no.1 out of survey no.78/2, the same has been fraudulently sold by Neeta with the help of Santosh and therefore, the offence.

6. It reveals from the complaint itself that Neeta has purchased some other plot bearing No.17 out of survey no.78/2 long back in the year 1984. The investigating officer has reported that since Neeta's name was allegedly recorded to the complainant's plot, he had applied to the revenue authority, however, failed. The complainant has neither produced anything to show that his plot was entered in the name of Neeta nor to show that Neeta has sold the

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same plot under registered instrument. Though the complainant came to know that Neeta's name was entered into his plot, however, for long gap of about 10 years, neither he obtained revenue extract, nor put any grievance till the year 2017.

7. For issuance of process the complainant has to at least make out a prima facie case to proceed further. There is no material even on prima facie basis to indicate that Neeta had sold plot of complainant in which Santosh assisted. Directing an individual to face a criminal prosecution is a matter of serious concern. Continuation of complaint without material amounts to abuse of the process of Court. In absence of any material, no case is made out to proceed further. In view of that, both petition succeeds and are accordingly allowed.

The impugned order of issuance of process dated 09.09.2021 passed by the Judicial Magistrate First Class, Akola in R.C.C.No.952/2021, along with the order of rejection of revision dated 14.03.2022 passed by the Additional Sessions Judge, Akola in Criminal Revision No.101/2021 are hereby quashed and set aside.

Rgd.

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Consequently, the complaint filed by Umesh stands dismissed.

8. The complainant is however, at liberty to take appropriate action as and when occasion arises on receipt of necessary documents.

9. Rule is made absolute in aforesaid terms with no order as to cost.

JUDGE

Rgd.