

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.26 OF 2021

Dilip Shankarappa @ Shankarrao Majge
and another

... APPLICANTS

VERSUS

The State of Maharashtra and another

... RESPONDENTS

.....

Mr. Ram S. Shinde, Advocate for applicants
Mr. P.G. Borade, A.P.P. for respondent No.1
Mr. R.K. Ashtekar, Advocate for respondent No.2.

.....

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 19th JANUARY, 2023

P.C. :

Learned counsel for the applicants seeks leave to amend the application so as to incorporate the Charge Sheet Number as well as Case Number and the details of the Court before which the same is pending. Leave granted. Amendment to be carried out forthwith.

2. With the consent of learned counsel for rival parties, heard finally at the stage of admission.

3. By this application under Section 482 of the Code of Criminal Procedure, the applicants have sought to quash the First Information Report bearing Crime No.239/2020, registered at City Police Station, Udgir, District Latur and the consequential Charge Sheet and R.C.C. No.265/2022, pending on the file of the learned Judicial Magistrate, First Class, Udgir, District Latur for the offence punishable under Sections 420, 465, 466, 467, 468, 471, 167 read with Section 34 of the Indian Penal Code.

4. The aforesaid crime was registered pursuant to the First Information Report lodged by the respondent No.2. The respondent No.2 has alleged that, the applicants herein had forged and fabricated revenue entries by cancelling Mutation Entry No.1212 and effecting Mutation Entry No.2919 in favour of the deceased Bakulabai.

5. Learned counsel for the applicants submits that, the applicants herein have only implemented the order of the Sub-Divisional Officer, which was finally confirmed by the Divisional Commissioner. Learned counsel for the applicants further submits that, in view of the subsequent order passed by the Sub-Divisional Officer pursuant to the application filed by the

respondent No.2, the applicants herein cancelled the earlier Mutation Entry No.2919, and once again effected Mutation Entry No.2993 in favour of the respondent No.2 herein. He submits that, the applicants have only complied with the order of the authorities and had only performed their official duty and there is absolutely no material on record to indicate that they were in any way involved in either forging the documents or committing an offence of cheating as alleged.

6. Learned counsel for the applicants states that, the daughter and son-in-law of the respondent No.2 are working in Police Department and that the respondent No.2 has misused the police machinery by filing false complaint and ensuring that the applicants were arrested on the same day that the First Information Report was lodged.

7. Learned counsel for the applicants states that the applicant No.1 has retired and sanction to prosecute the applicant No.2 has been rejected. He has placed on record the copy of order dated 27/7/2022 rejecting sanction to prosecute the applicant No.2. The learned counsel for the applicants states that the entire proceedings are manifestly attended by malafides and are malicious. He submits that, the First

Information Report as well as the other material on record, even if accepted in their entirety, do not disclose commission of cognizable offence, and that continuance of criminal proceedings against the applicants, who are public servants, is sheer abuse of process of the Court.

8. Per contra, the learned counsel for respondent No.2 submits that, the applicants have cancelled the Mutation Entry No.1212 and effected Mutation Entry No.2919 in favour of Bakulabai though the legal representatives of Bakulabai had not challenged the decree. He submits that, the applicants are involved in forging and fabricating the records in collusion with co-accused. He further submits that, the respondent No.2 was constrained to file the private complaint because the police authorities had not taken any action against the applicants despite the complaint lodged by him on 4/8/2019. He concedes that the respondent No.2 has filed a second Report on 4/12/2020 during the pendency of the criminal complaint before the learned Magistrate. He submits that such technicalities cannot be looked into at this stage since the material on record prima facie shows involvement of the applicant in commission of the crime. He contends that this is not a case which warrants exercise of inherent powers under Section 482 of the Code of

Criminal Procedure.

9. We have perused the record and considered the submissions advanced by learned counsel for the respective parties.

10. Section 482 of the Code of Criminal Procedure confers powers on the High Court interalia to prevent abuse of the process of Court or to secure the ends of justice. It is well settled that the powers under Section 482 can be exercised to quash the First Information Report or the Charge Sheet/ Criminal proceedings when the allegations set out in the First Information Report and the other material collected in the course of the investigation do not constitute any cognizable offence or when the criminal proceeding is attended with manifest malafides or is malicious and vexatious.

11. In the light of the above, the only question for our consideration is whether the First Information Report and the other material collected in the course of the investigation disclose any cognizable offence as against these applicants.

12. The respondent No.2 has alleged that the applicants herein are involved in forging the revenue record and have, therefore, committed offences punishable under Sections 420, 465, 466, 467, 468 and 471 of the Indian Penal Code.

13. In **Deepak Gaba & ors. Vs. State of Uttar Pradesh & anr.** [2023 SCC OnLine SC 3], the Hon'ble Supreme Court has observed that :-

17. In order to apply Section 420 of the IPC, namely cheating and dishonestly inducing delivery of property, the ingredients of Section 415 of the IPC have to be satisfied. To constitute an offence of cheating under Section 415 of the IPC, a person should be induced, either fraudulently or dishonestly, to deliver any property to any person, or consent that any person shall retain any property. The second class of acts set forth in the section is the intentional inducement of doing or omitting to do anything which the person deceived would not do or omit to do, if she were not so deceived. Thus, the sine qua non of Section 415 of the IPC is "fraudulence", "dishonesty", or "intentional inducement", and the absence of these elements would debase the offence of cheating [Indium India Telecom Limited Vs. Motorola Incorporated, (2011) 1 SCC 74]. Explaining the contours, this Court in Mohd. Ibrahim Vs. State of Bihar [(2009) 8 SCC 751], observed that for the offence of cheating, there should not only be cheating, but as a consequence of such cheating, the accused should also have dishonestly adduced the person deceived to deliver any property to a person; or to make, alter, or destroy, wholly or in part, a valuable security, or anything signed or sealed and which is capable of being converted into a valuable security."

14. The essential ingredients of offences under Sections 465, 466, 467, 468 and 471 is forgery within the meaning of Section 463 of the Indian Penal Code. The essential ingredient of forgery is making any document or part thereof with an intent to :-

- (1) cause damage or injury to the public or any person; or
- (2) to support any claim of title; or
- (3) to cause any person to part with his property; or
- (4) to commit any fraud or that fraud may be committed.

15. In **Sheila Sebastian Vs. R. Jawaharaj (Criminal Appeal No.359-360 of 2010)**, while considering the scope of Section 464, the Hon'ble Supreme Court referred to the decision in **Mir Nagvi Askari Vs. C.B.I. [(2009) 15 SCC 643]** and observed in paragraphs No.24 and 25 as under :-

24. In Mir Nagvi Askari vs. Central Bureau of Investigation, (2009) 15 SCC 643, this Court, after analysing the facts of that case, came to observe as follows:

“A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing

it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else.

The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the said section is also not applicable to the present case.

The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.”

25. *Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to*

Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.”

16. In the instant case, the records reveal that, Sangubai, the predecessor of respondent No.2 had filed a suit bearing No.455/1984 which was decreed and said Sangubai was declared to be the owner of the property under Survey No.229 of village Udgir and the defendants in the suit were directed to hand over possession to the plaintiff in the suit. Pursuant to the said decree, Mutation Entry No.1212 came to be effected in favour of said Sangubai. It is not in dispute that the appeals filed by Manik Phulari and Bakulabai were dismissed by the learned District Judge. Bakulabai did not challenge the said judgment. Nevertheless, Manik Phulari, one of the defendants, preferred a Second Appeal and by order dated 19/3/2001 this Court stayed execution of the said judgment and decree passed in favour of said Sangubai.

17. It is not in dispute that, pursuant to the stay order granted by this Court, said Manik Phulari filed an application before the Sub-Divisional Officer for cancellation of Mutation

Entry No.1212. The said application came to be allowed and the appeal and revision filed by the respondent No.2 were dismissed by the Collector and by the Divisional Commissioner. It is on the basis of the order passed by the Sub-Divisional Officer, which was confirmed by the Collector and Divisional Commissioner, that the Mutation Entry No.1212 came to be cancelled and Mutation Entry Nos.2919 and 2809 came to be effected in favour of deceased Bakulabai and Manik Phulari.

18. The records reveal that, the respondent No.2 subsequently approached this Court and sought clarification of the stay order. By order dated 15/1/2013, this Court clarified that execution of the decree was stayed only qua Manik Phulari and that it could be executed against the other defendants. Pursuant to this order, the respondent No.2 filed a separate application before the Sub-Divisional Officer to restore Mutation Entry No.1212 and to cancel Mutation Entry No.2919. The said application was allowed and Mutation Entry No.2919 came to be cancelled and Mutation Entry No.2993 came to be effected and name of the respondent No.2 came to be entered.

19. There are absolutely no allegations against the applicants for having induced or deceived any person much less

fraudulent or dishonest inducement to deliver a property or to do or omit to do any act. 'Fraudulence', 'dishonesty' or 'intentional inducement' which are held to be sine qua non of Section 415 of the Indian Penal Code are lacking. Hence offence of cheating within the meaning of Section 415 of the Indian Penal Code is not made out.

20. The First Information Report as well as the other records clearly indicate that these applicants had only implemented the order passed by the higher authorities in discharge of their official duties. Even presuming that the applicants herein have misinterpreted the order, the same per-se would not attract the provisions of Section 464 of the Indian Penal Code since mere cancellation of Mutation Entry No.1212 and/ or recording of the name of Bakulabai under Mutation Entry No.2919, would not amount to making a false document as the same does not involve fraudulent or dishonest intention. The applicants, who are the public functionaries, cannot be dragged in a private dispute by merely stating that they have acted in collusion with the co-accused, particularly when they are not the beneficiaries. They have no reason to defraud the respondent No.2 and have nothing to gain from effecting such changes.

21. The First Information Report as well as the other material on record do not disclose essential ingredients of forgery, within the meaning of Sections 463 of the Indian Penal Code. Hence the ingredients of the offences alleged in the final report are not made out against the applicants. Considering these aspects, the sanction to prosecute applicant No.2, who is still in service, has also been declined.

22. The applicants have alleged that the daughter and son-in-law of respondent No.2 who are working in the Police Department at Latur have extended pressure to implicate these applicants.

23. In this regard, it is pertinent to note that, the police had not registered the offence on the basis of the first report lodged by the respondent No.2 for which reason respondent No.2 filed a private complaint before the learned Judicial Magistrate, First Class, Udgir on 12/6/2020. During the pendency of the said complaint, the respondent No.2 filed another report on 4/12/2020, alleging that these applicants had forged the documents and effected Mutation Entry in the name

of Bakulabai. On the basis of the second report, lodged during the pendency of the private complaint, First Information Report No.239/2020, has been registered against these applicants and others for committing the aforesaid offence.

24. It is also pertinent to note that, the First Information Report dated 4/12/2020 does not refer to the previous first report lodged on 4/8/2019. The respondent No.2 also did not disclose that the private criminal complaint in respect of the same incident was already filed and the same was still pending on the file of learned Judicial Magistrate, First Class, Udgir. The records also indicate that upon filing of the second report, the police acted at a lightening speed and arrested both the applicants on the same day, despite the lockdown declared due to outbreak of Covid-19 Pandemic. The conduct of the respondent No.2 and the subsequent action of the police in arresting these public functionaries during peak of Covid 19 Pandemic justify allegation of the applicants and indicate that the proceedings against these applicants are malicious and vexatious.

25. Having gone through the entire records, in our considered view, the First Information Report as well as the

other records do not disclose any cognizable offence as against these applicants. The case is squarely covered by illustrations 1, 3 and 7 of the guidelines issued by the Hon'ble Apex Court in case of **State of Haryana & ors. Vs. Ch. Bhajan Lal [AIR 1992 SC 604]**.

26. In the result, the application is allowed. The First Information Report bearing Crime No.239/2020, registered at City Police Station, Udgir, District Latur and the Charge Sheet and R.C.C. No.265/2022, pending on the file of the learned Judicial Magistrate, First Class, Udgir, District Latur for the offence punishable under Sections 420, 465, 466, 467, 468, 471, 167 read with Section 34 of the Indian Penal Code are hereby quashed qua these applicants.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

fmp/-