

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 49 OF 2022

PANJABRAO NARAYANRAO NAIK

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Petitioner : Party In Person

APP for Respondent No.1/State : Mr. S.R. Yadav-Lonikar

Advocate for Respondent No.2 : Mr. Kalani Pravin N.

Advocate for Respondent No.3 : Mr. Deshmukh Sachin S.

...

CORAM : KISHORE C. SANT, J.

DATE : 22nd FEBRUARY 2023.

Per Court :

1. This petition filed by the party in person aggrieved by the judgment and order dated 12.10.2021 passed by the learned Judicial Magistrate First Class, Hingoli on an application below Exhibit-24 in R.C.C. No.90/2015, whereby an application filed by the petitioner for adding respondent no.1 and 2 as an accused came to be rejected.

2. The facts in short are that the father of the petitioner was owner of an open plot admeasuring 180 Sq. meters situated at Risala Bazar,

Hingoli. After the death of father of the petitioner, the mother of the petitioner viz: Geetabai, this petitioner and his brother, Pralhadrao, are the legal heirs and thus, they become owner of the plot. This petitioner resides in Mumbai because of his service and now is an advocate. Taking benefit of that, Pralhadrao got his name mutated in the ownership column in the P. R. Card of the said plot. The petitioner therefore lodged the complaint stating that making Pralhadrao and these two respondents as accused persons, who were at the relevant time, Taluka Inspector of Land Records, Hingoli and Chief Officer of Municipal Council, Hingoli respectively. It is alleged that by fabricating and producing false documents, Pralhadrao got the mutation entries effected. It was duty of these two respondents to take proper care. It is alleged that these respondents also were in collusion with the brother of the petitioner. The petitioner therefore had approached the Court of learned JMFC, Hingoli by filing a complaint as Criminal Miscellaneous Application No. 153/2014. The learned Magistrate by order dated 25.08.2014 was pleased to partly allow the petition and directed P.I. Police Station, Hingoli to register the crime only against Pralhadrao for the offences punishable under Sections 420, 468, 471, 420-B, 504, 506

of the Indian Penal Code. It was made clear that during the course of investigation, if it revealed that any other person is also involved in commission of offence then Investigating Officer was given a liberty to proceed further to add such person as accused. The petitioner was therefore under the hope that during the investigation, the police will find material against respondents and will file charge-sheet against them. However, the police filed charge-sheet on 29.04.2015 only against the brother of the petitioner, Pralhadrao. In the charge-sheet, these two respondents are shown as witnesses.

3. The petitioner therefore filed an application below Exhibit-24 in R.C.C. No.90/2015 and prayed that the present respondents also be tried in the said case. It is alleged in the application that without collusion and connivance, with these respondents no offence could have been committed by Pralhadrao. The apprehension is expressed that since the respondents are now shown as witnesses, they are bound to support Pralhadrao.

4. The learned JMFC, Hingoli, after hearing the parties recorded that if during the course of trial, it reveals that there is involvement with the

aid of Section 319 of the Cr.P.C., the respondents can be added as accused, if strong evidence comes on record. The learned Magistrate by order dated 12.10.2021 rejected the application. The petitioner is thus before this Court.

5. The petitioner vehemently argued the matter. He submits that both the respondents were acting as responsible officers. It was their duty to verify the facts on the basis of documents brought before them. When Pralhadrao filed an application, he had produced certain documents, wherein the signatures of this petitioner were fabricated. Though there was no partition in the family property, still the entries are taken. The respondents were well aware of the procedure to be followed and the documents required for taking mutation. As the application by Pralhadrao was moved behind back of the petitioner, it was necessary to issue notice to the petitioner, before recording name. When the petitioner pointed out to the authorities to hold an enquiry and cancel the entries illegally taken in the record, no action was taken. This failure clearly shows that officers are in collusion with the brother – Pralhadrao. When Pralhadrao had produced one document styled as

power of attorney executed by this petitioner in his name, however the signature in the said agreement has clearly fabricated and for this also it was pointed out that the offence is committed.

6. The learned Advocate for respondent no.2 vehemently opposes the petition. He submits that respondent no.2 was working as a Taluka Inspector of Land Records, Hingoli. He has taken entry in record while discharging his official duty. He has taken the entries on the basis of the documents produced before him. There is no question of having any collusion with the brother of the petitioner. It is only a suspicion in the mind of the petitioner that this respondent is in collusion with the original accused. There is no foundation or material to draw an inference that it is this respondent who has helped in any way the original accused.

7. Mr. Deshmukh, learned Advocate for respondent no.3 submits that his client was working as the Chief Officer of Nagar Parishad, Hingoli at the relevant time. He has merely acted on the basis of the documents produced before him and has passed the order. No fault can be found with his client. He submits that there is no allegation of the petitioner

that without following procedure, the entries are taken. He submits that if at all the petitioner has any grievance, he can challenge the orders or/ entries in the revenue record. The revenue record does not confer any right on the person over the property. If the petitioner wants to establish his right the remedies are open to him. However only to bring pressure by using shortcut method, he wants these respondents to be added as accused. The Investigating Officer has rightly not filed charge-sheet against these respondents and has rightly shown as the respondents are the witnesses. He submits the petition is totally misconceived and prays that the same be dismissed.

. Both the Advocates for respondents submit that the learned JMFC has rightly passed the order.

8. The learned APP also supports the order. He submits that during investigating, nothing is found against the present respondent no.2 and 3 and therefore they are not made accused.

9. After hearing the arguments and going through the order, this Court finds that the learned JMFC while dismissing the application, has considered all the relevant factors. The learned JMFC has taken into

consideration the entries taken in the P. R. Card and the police had rightly carried out the investigation. The learned Magistrate further considered that if at all it comes during the trial that certain other persons are also involved in the crime, certainly they can be added with the aid of power vested in the Court vide Section 319 of the Cr.P.C. There has to be sufficient evidence on record. He further concluded that it is only an allegation made against these two persons. It is further rightly observed that the authorities have acted in discharge of their official duty. This Court finds that in absence of material against the respondent no. 2 and 3, they cannot be added as accused merely on the basis of suspicion in the mind of the petitioner/complainant. Considering that the charge-sheet was filed on 29.04.2014, whereas the application is filed in February, 2017, thus there is a delay in filing the application. This Court therefore finds that no interference is called for in the impugned order. Thus the petition does not call for any interference at the hands of this Court and the same is dismissed.

[KISHORE C. SANT, J.]

Najeb.