

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

CRIMINAL WRIT PETITION NO. 246 OF 2019

- 1] Haji Muhammad Yasin s/o Haji Muhammad Osman
 - 2] Muhammad Yonus s/o Haji Mohd. Usman
 - 3] Niaz Muhammad s/o Haji Mohd. Noor
 - 4] Riaz Muhammad s/o Haji Mohd. Noor
 - 5] Muhammad Ayaz s/o Mohd. Yasin
 - 6] Muhammad Farooq s/o Mohd. Yunus
 - 7] Abdul Rauf s/o Abdul Rehman [Vide order dtd. 07.09.2022, petition disposed of to the extent of petitioner no. 7]
- ...Petitioners**

Versus

The State of Maharashtra & Anr.

...Respondents

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Mr. A. D. Kasliwal – Advocate for the petitioners

Mr. Wasif Salim Shaikh h/f Mr. Sajid A. R. Shaikh – Advocate for the respondent no. 2

Mrs. Vaishali S. Chaudhari – APP for respondent/State

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**CORAM : R. G. AVACHAT
AND
SANJAY A. DESHMUKH, JJ.**

DATED : 24th JULY, 2023

PER COURT : -

1. This Criminal Writ Petition is filed for quashing the First Information Report No. 0199 of 2018 registered with City Chowk Police Station, Aurangabad City, for the offences punishable under Sections 420, 468, 471 of the Indian Penal Code and the consequential Charge-sheet bearing RCC No. 1017/2020 pending in the court of 2nd Judicial Magistrate First Class at Aurangabad.

2. Heard. Perused the First Information Report and the relevant police papers. Matter pertains to the three properties, namely, CTS Nos. 14089, 14169 and 14208.

3. Insofar as property bearing CTS No. 14089 is concerned, original petitioner no. 7, who committed the alleged crime is no more. **The prosecution to the extent of petitioner no. 7, therefore, stands abated in relation to CTS No. 14089.**

4. So far as regards property bearing CTS No. 14169 is concerned, the PR card would indicate that the said property stood in the name of "Bagban Jamatkhana". One Mr. Haji Usman Shaikh Biban was appointed as a Chairman of Bagban Jamatkhana for maintenance/protection of the said property but on his demise, his three sons, namely, Late Haji Noor Mohammad and petitioner nos. 1 and 2 filed affidavit claiming to be the successor in title of Haji Usman Shaikh Biban and got their names recorded in the property card. We failed to understand as to how these three persons could claim title to the said property by succession. These three sons, *prima facie*, committed the alleged crime. Perusal of the record would show that one of these three sons i.e. Haji Noor Mohammad s/o Mohammad Usman passed away but his legal representatives are on record as petitioner nos. 3 and 4. We

find no crime to have been committed by petitioner nos. 3 and 4 since it was their father (deceased) Haji Noor Mohammad, who got his name recorded in the PR card, fraudulently. **We are, therefore, inclined to grant relief to petitioner nos. 3 and 4 as far as property bearing CTS No. 14169 is concerned.**

. The learned advocate for the petitioners, on instructions, seeks withdrawal of the petition to the extent of petitioner nos. 1 and 2 in relation to property bearing CTS No. 14169. **Petition stands dismissed to the extent of petitioner nos. 1 and 2 in relation to property bearing CTS No. 14169.** We also find that these two petitioners have no case for discharge.

5. So far as regards property bearing CTS No. 14208 is concerned, in Khasra Patra (7/12 extract) this property was earlier identified as Survey No. 70, *ad measuring* 2 acres and 18 Ares. Since 1959, the said land was shown as Kabrastan. One Amirnavaz Khan Sarfaraz Khan was shown as Kabjedar (possessor) of the said land. The said Amirnavaz Khan Sarfaraz Khan sold the said land to the father of petitioner nos. 1 and 2 on 17.02.1959. As such, whatever the crime committed by Amirnavaz Khan Sarfaraz Khan and father of petitioner nos. 1 and 2, cannot be attributed to petitioner nos. 1 and 2. Amirnavaz Khan and the father of petitioners no. 1 and 2 are no more. The city survey scheme was implemented way back in 1971. The name of Haji

Usman was recorded as purchaser of the said land. Said Haji Usman is no more. Since his legal representatives (sons), who are the petitioner nos. 1 and 2 herein, continued to have their names recorded and dealt with said proeprty as their own cannot be said to have committed the alleged offence/s. Suffice it to say, that the alleged crime was committed by Haji Usman Biban and one Amirnavaz Khan Sarfaraz Khan and they are not alive. In view of the same, **we are inclined to grant relief to petitioner nos. 1 to 6 so far as property bearing CTS No. 14208 is concerned.**

6. So far as property bearing CTS No. 14169 is concerned, the petitioner nos. 1 and 2 shall face the trial.

7. With the observations as aforesaid, **the Criminal Writ Petition stands disposed of.**

[SANJAY A. DESHMUKH]
JUDGE

[R. G. AVACHAT]
JUDGE