

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

CRIMINAL APPLICATION NO. 745 OF 2019

Ranjana D/o. Nivrutti Patil,
Age : 37 Years, Occu. : Service,
R/o. : Purnad, Muktainagar,
Tq. Muktainagar, Dist. Jalgaon.

... Applicant

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Muktainagar Police Station,
Muktainagar, Dist. Jalgaon,
2. Sahebrao S/o Trimbak Patil,
Age : 48 Years, Occu. Business and
Agriculture,
R/o. Shikshak Colony,
Behind Hanuman Mandir,
Station Road, Raver,
Tq. Raver & Dist. Jalgaon.

... Respondents.

.....
Mr. Ajinkya Kale i/b. M/s. Talekar and Associates for Applicant.
Mrs. V. S. Choudhari, APP for Respondent No.1 – State.
Mr. V. B. Patil, Advocate for Respondent No.2
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 6th FEBRUARY, 2023.

PRONOUNCED ON : 20th FEBRUARY, 2023

ORDER :

1. By invoking provisions under section 482 of the Code of Criminal Procedure, applicant herein is seeking quashment of complaint bearing R.C.C.

No. 97 of 2016 on the file of the learned Judicial Magistrate First Class, Muktainagar, Dist. Jalgaon and to quash the order dated 09.01.2019 passed by the learned Additional Sessions Judge, Bhusawal in Criminal Revision Application No.32 of 2017. Alternatively, there are prayers to stay the proceedings in R.C.C. No. 97 of 2016 for commission of offence under section 420 read with 34 of Indian Penal Code.

2. Heard Mr. Kale, learned counsel for the applicant, Mrs. Chaudhari, learned APP for Respondent – State and Mr. Patil, learned counsel for respondent No.2.

3. It is submitted that, applicant is government servant and was working as Talathi. Original accused Dhanraj and Bharat had moved application for seeking mutation of their names in the 7/12 extract on the strength of sale deed and accordingly it was mutated vide entry No. 2581, i.e. in respect of land gut No.26. The Tahsildar, Muktainagar created division of said land gut No.26 into 26(1/1) and 26(1/2) vide entry No.2668. It is submitted that accused Bharat and Dhanraj applied for loan from Central Bank of India by executing mortgage deed, but only to the extent of land gut No.26(1/1).

4. It is pointed out that private complaint came to be lodged by

Sahebrao Trimbak Patil questioning the said order of Tahsildar before Sub Divisional Officer, Bhusawal and the said appeal came to be allowed and thereby mutation entry No. 2668 came to be set aside.

5. It is pointed out that meanwhile, present applicant by order dated 30.05.2015 came to be transferred to Purnad. On 01.07.2016, Central Bank of India issued communication to the present applicant by pointing out that mutation entries of debt and liabilities are necessary since mutation entry No.2668 is cancelled. While discharging official duties, present applicant has entered the debt and liabilities of said Bharat and Dhanraj i.e. only because of letter by bank. That there was no ill intention or collusion with Dhanraj and Bharat. Meanwhile, respondent No.2 Sahebrao filed private complaint bearing R.C.C. No. 97 of 2016 alleging commission of offences under sections 120, 167, 420, 469 read with section 34 of IPC.

6. On verification of the same, learned Judicial Magistrate First Class, Muktainagar was pleased to issue process against Dhanraj and Bharat as well as unfortunately against present applicant for commission of offence under section 420 read with 34 of IPC. That, applicant had questioned the said issue process order before the learned Additional Sessions Judge, Bhusawal by invoking section 397 of Cr.PC.. However, the same came to be dismissed. Hence the instant proceedings.

7. It is pointed out by the learned counsel for applicant that present applicant has not colluded with Bharat and Dhanraj. He has merely performed his official duties. Learned counsel for applicant pointed out that getting the mortgage deed corrected in respect of gut No. 26 is not the duty of the applicant and rather it is the duty of borrower and the bank and therefore applicant ought not to have been implicated. It is further pointed out that as soon as the Central Bank of India noticed the fact that the land bearing gut No. 26(1/1) has been cancelled, the bank had preferred application to the present applicant and only in the backdrop of such communication and request of the bank, necessary entries of debt and liabilities were carried out. There was no ill intention to do so. However, learned Judicial Magistrate First Class has failed to consider and appreciate the correct position that applicant was discharging her official duties and has adopted due procedure of law. There was no illegality or connivance with accused Bharat and Dhanraj.

8. It is further submitted that it ought to have been appreciated that the applicant alone is being targeted in the alleged crime when the entry is even sanctioned by circle officer and higher authorities. Applicant is at the lowest rung in hierarchy that is working as Talathi and she is made scapegoat. Even the ingredients for attracting offence for which complaint has been filed

are not available in the complaint. Rather, entire dispute was civil in nature and therefore criminal action was not the option. However, the complaint at the instance of respondent no.2 is misuse of provisions of law. As both learned Judicial Magistrate First Class and revisional court failed to consider and appreciate this aspect, it is submitted that, the prayers so made herein are required to be granted.

9. Learned counsel for respondent No.2 strongly opposed taking fundamental objection to the maintainability of the proceedings under section 482 of Cr.P.C. It is pointed out that orders passed by the Judicial Magistrate First Class of issue process can never be taken up for quashment. Secondly, it is pointed out that apparently while irregularities were committed by original accused Bharat and Dhanraj and that too in connivance with present applicant, private complaint was filed. Verification was done by the learned Judicial Magistrate First Class. Only on complete satisfaction, the learned trial Judge has chosen to initiate action by issuing process for only offence under section 420. Other offences for which action was sought has not been considered by the learned Judicial Magistrate First Class. Thus, it is his submission that there is proper application of mind. Law will take its own course and therefore he prays that the relief sought by the applicant be rejected.

10. Heard both sides. It appears that the land which is transacted with accused Bharat and Dhanraj is ancestral one and therefore, the said transaction was objected by one of the family members of joint family i.e. Sahebrao. It appears that, on the request of Bharat and Dhanraj, the Tahsildar Authorities have carried out division of the gut No. 26 which was alleged to be purchased by Bharat and Dhanraj. This division at the hands of Tahsildar Authorities was taken exception to by preferring appeal before the Sub Divisional Officer and on getting satisfied regarding its illegality, application seems to have been allowed.

11. It appears that Dhanraj and Bharat had borrowed loan on the strength of mortgage deed. However, bank later on sought entries of debts and liabilities and at that stage present applicant appears to have done the needful. It ought to have been considered by present applicant that the division was set aside by higher revenue authorities and therefore entry of debts and liabilities to the extent of Bharat and Dhanraj ought not to have been granted or certified by present applicant who was admittedly working as Talathi. Infact said mutation entry was not in existence. Therefore, Sahebrao – respondent No.2 seems to have preferred private complaint alleging above misdeeds. The learned Judicial Magistrate First Class seems to have followed the procedure as contemplated under law and has initially taken steps for getting verification done and on completing that process, learned trial Judge

seems to have passed issue process against her. Though private complaint was for several offences, learned trial court has issued process only for commission of offence under section 420 of IPC. Therefore, there seems to be proper application of mind. Aggrieved by that applicant seems to have approached revisional court, but revisional court has also dismissed the revision.

12. Now, at this stage attempt has been made by approaching this Court praying for quashing the complaint as well as crime registered on the order of Judicial Magistrate First Class and also prayers are made for granting stay.

13. In view of above discussion, it is apparent that present applicant being Talathi, was not expected to certify entries of debt and liabilities in favour of Bharat and Dhanraj, in spite of division being held to be illegal by Sub Divisional Officer. Therefore, original complainant had filed private complaint. As stated above, after verification learned Judicial Magistrate First Class had issued process for seeking presence of applicant and other accused. If at all they have any case on merits, they are free to put up the same by causing appearance and can still contest their case. *Prima facie*, there is no case for grant of relief as prayed.

14. Therefore, finding no merits in the application, following order is passed.

ORDER

The criminal application is dismissed.

(ABHAY S. WAGHWASE, J.)

15. After pronouncement of order, learned counsel Ms. Manisha Dalave holding for M/s. Talekar and Associates for Applicant submits that she intends to challenge the order passed by this Court and therefore, it is prayed that the Record and proceedings may not be sent back forthwith.

Therefore, in view of above request, Record and Proceedings be retained for further period of two weeks.

(ABHAY S. WAGHWASE, J.)