

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

**CRIMINAL WRIT PETITION NO. 455 OF 2022**

Ibrahim Sujatali Sayyad

.. Petitioner

Versus

Majid Sujatali Sayyad and others

.. Respondents

Mr. Shrikant B. Madde, Advocate for the Petitioner.

Mr. M. P. Kale, Advocate for Respondent Nos. 1 to 5.

Mr. P. M. Kulkarni, APP for Respondent No. 12.

**CORAM : KISHORE C. SANT, J.**

**DATED : 18<sup>th</sup> JANUARY, 2023.**

**P. C. :-**

. Heard learned advocate for the petitioner, learned A.P.P. and learned advocate for respondent Nos. 1 to 5. By consent of the parties, taken up for final disposal.

2. The original complainant is before this Court by filing this petition challenging the order passed by the learned Additional Sessions Judge, Latur dated 20.01.2022 in Criminal Revision Application No. 3/2019 dismissing the criminal revision application thereby confirming the order passed by the learned J.M.F.C. discharging the respondents from R.C.C. No. 203/2013 from the offences punishable under Sections 420, 468, 471 r/w Section 34 of the Indian Penal Code (for short "I.P.C.") vide Section 245 (1) of the Code of Criminal Procedure.

3. The petitioner has filed private complaint in the Court of learned J.M.F.C. AUSA bearing R.C.C. No. 203/2012. It is the case of the petitioner that, brother of the petitioner namely Shamu @ Samad died on 06.08.2010 at Haregaon. After his death, the complainant/petitioner was cultivating his land, however accused Nos. 1 to 4 that is other brother, sister in law and their sons started obstructing possession of the complainant. The complainant has already filed a civil suit for declaration that on the basis of the will deed executed by Shamu @ Samad he has become owner and further injunction restraining accused Nos. 1 to 4 from interfering with his possession. The suit is registered as R.C.S. No. 271/2011. It is reported that the said suit is still pending.

4. It is further a case of the petitioner that by producing a deed of partition the accused persons have recorded their names in the revenue entry. He found that there is a thumb impression made of Shamu on the said partition deed. His case is that when Shamu was already dead, there was no question of making of thumb impression on the document dated 27.06.2011 and the complaint was filed.

5. The learned Magistrate was pleased to issue process against accused Nos. 1 to 11, however, it was dismissed against accused Nos. 12 and 13 who happens to be Government servants.

6. The learned J.M.F.C. at the stage of framing of charge specifically considered in paragraph No. 13 of the order that, it is nobody's case that the thumb impression appearing on the partition deed is of deceased Shamu. On the contrary, it is the specific case of the accused No. 1 that since Shamu was dead he put his thumb impression on the deed. Considering this, order discharging accused.

7. The petitioner therefore, filed criminal Revision No. 03/2019. The learned Additional Sessions Judge dismissed the criminal revision recording that, no illegality is committed while passing an order on application below Exh. 01. In paragraph Nos. 15 and 16 of the said judgment the learned Additional Sessions Judge specifically observed that no case is made out against the accused persons. It is further observed that, the complainant that is present petitioner was not the owner of share of deceased Shamu and thus, there is no question of his becoming owner of the said property on the basis of alleged will deed executed by Shamu. It is further observed that, already the dispute is pending before the Civil Court in respect of ownership of the property and therefore, no case is made out to attract the ingredients of section and confirmed the order passed by the learned J.M.F.C.

8. It is the submission of the learned advocate for the petitioner that the alleged deed of partition was executed on 27.06.2011 and still

the thumb impression of Shamu appears on the said deed and therefore, he submits that both the Courts below have committed illegality and come to the conclusion that the case for discharge is made out.

9. Learned advocate for respondent Nos. 1 to 5 vehemently opposes the petition. From the record, he pointed out that it is nobody's case that the thumb impression appearing on the alleged deed of partition is of deceased Shamu. On the contrary, he submits that, it is a specific case of accused No. 1 that at no point of time anybody has claimed that the thumb impression is of deceased Shamu. The complaint is totally misconceived and therefore rightly the Courts below have passed the order.

10. After going through the complaint and the order passed by the learned Additional Sessions Judge, this Court finds that, no illegality or perversity is committed by the learned Additional Sessions Judge. No interference is called for and the petition is thus dismissed.

11. The writ petition is disposed off.

**( KISHORE C. SANT, J. )**

PS.B.