

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

CRIMINAL REVISION APPLICATION NO. 72 OF 2015

Dr. Shaikh Gulam Rasool Papamiya,
Age : 64 Years, Occ. Doctor and Agri.
R/o. Kuran Road, Viajy Nagar, Sangamner,
Tq. Sangamner, District Ahmednagar. ...Applicant

V E R S U S

1. Shamshoddin Majidkhan,
Age : 56 Years, Occ. Agriculture,
2. Khalil Majidkhan,
Age : 49 Years, Occ. Agriculture
3. Hamid Hafiz Mahammadkhan,
Age : 76 Years, Occ. Agriculture
4. Mushtaq Hafiz Mahammadkhan,
Age : 56 Years, Occ. Agriculture
5. Rashid Hafiz Mahammadkhan,
Age : 69 Years, Occ. Agriculture,
6. Naim Rashid Khan,
Age : 42 Years, Occ. Agriculture
7. Asif Rashid Khan,
Age : 36 Years, Occ. Agriculture
8. Aadil Rashid Khan,
Age : 32 Years, Occ. Agriculture

Respondent No. 1 to 9
R/o. Jahagirdar Mala,
Morchudnagar, Link Road,
Kedgaon, Ahmednagar

9. Sau. Manjushri Nirmal Mutha,
Age : 31 Years, Occ. Agriculture

10. Sonali Amit Mutha,
Age : 37 Years, Occ. Agriculture
11. Mangala Sharad Mutha,
Age : 64 Years, Occ. Agriculture
12. Pramila Ashok Mutha,
Age : 65 Years, Occ. Agriculture

Respondent No. 9 to 12
R/o. 83, Maniknagar,
Nagar-Pune Road, Ahmednagar

13. Shri Shinde B.T.
Age : 39 Years, Occ. Service,
R/o. Ahmednagar.
14. Sharad Zoting,
Age : 49 Years, Occ. Service,
II-Sub-Registrar Office,
Ahmednagar.

..Respondents

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Mr. Balasaheb N Magar, Advocate for applicant.
Mr. Narayan B. Narwade Advocate for Respondent No.13.
Mr. A.PBhandari, Adv. h/f Mr. R.R. Sancheti for
Respondent Nos. 9 to 12.
Mr. Kalkasaheb J. Tandale, Adv. h/f Mr. P.S. Pawar,
Advocate for Respondent Nos. 1 to 8
Mr. Dhananjay M. Shinde, Advocate for Respondent No.14.

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CORAM : S. G. MEHARE, J.

Reserved on : 24.01.2023
Pronounced on : .06.03.2023.

JUDGMENT :

1. The applicant/complainant impugned the order of the learned

Chief Judicial Magistrate, Ahmednagar below Exh. No.1 in R.T.C. No. 344/2011 dated 16.02.2015 dismissing the complaint under Section 203 of the Code of Criminal Procedure. (Cr.P.C. for short)

2. Heard the counsel for applicant and the learned counsels for respondents.

3. The brief facts of the case were that the applicant had preferred a complaint under Section 200 of the Code of Criminal Procedure alleging that the respondents/accused No.1 to 8 managed to delete the entry of name of his mother from 7/12 extract and then sold the property from Survey No.60 of village Nalegaon Taluka and District Ahmednagar with a view to deprive right of the applicant. The dispute between the applicant and respondents No.1 to 8 has a chequered history of filing civil suit for partition. The civil suit of the applicant for partition was dismissed. However, his appeal was allowed by the District Court. This Court dismissed the Second Appeal of respondents No. 1 to 8. They have preferred the Special Leave Petition before the Hon'ble Supreme Court and on the date of filing of the complaint it was pending. When the alleged forgery was committed, the execution of partition decree before the Revenue Authority was in progress.

4. The allegations in brief are that all accused in conspiracy with the Revenue Officer and Sub Registrar deliberately forged the 7/12 extract and executed a sale deed of the portion of land Gut No. 60 without partition and thereby committed an offence punishable under Sections 420, 409, 463, 465, 466, 467, 468, 469, 471 read with Section 34 of the Indian Penal Code.

5. The verification statement of complainant was recorded on affidavit. Considering his statement and the material placed on record, the learned Chief Judicial Magistrate, Ahmednagar, instead of making enquiry himself, directed the police to make an enquiry under Section 202 of the Cr.P.C. The police made a thorough investigation and submitted a report under Section 202 of the Code of Criminal Procedure in the Court. In the report it has been disclosed that the name of the mother of the applicant was deleted from the 7/12 extract, however, it was deleted inadvertently. The investigating officer has gone through the documents and opined that the entire land from Gut No. 60 was not sold but only 2 Hectar 43 R of land from the western side was sold by the respondents No. 1 to 8 to the remaining respondents. He has also opined that the entry in the 7/12 extract is not a document of title. The Sub-Registrar has no power to examine the title. The name of the mother of complainant was again added in

Revenue record.

6. The learned Chief Judicial Magistrate, Ahmednagar heard the learned counsel for the complainant and considered the documents placed on record as well as the report under Section 202 of the Code of Criminal procedure submitted by the police and held that :-

“It reflect from the complaint that there is Civil dispute between the complainant and the accused. The complainant is trying to drag the said litigation and converted it into the Criminal litigation. If the complaint has given about the deletion of the name of his mother from the 7/12 extract, then he ought to have file the Appeal or other proceeding before the Revenue Authority. He cannot drag *Gav kamgar* Talathi in Criminal Court,because under the official capacity being the Talathi, he passed the order and deleted the name of mother of the complainant. Therefore, without availing remedy of appeal before appropriate authority, the complainant cannot drag *Gav kamgar* Talathi in Criminal Court. According to the complainant Gut No 60 was allotted to his share. However, it is well settled law that notice of *lis pendens* itself did not declare the document of the sale deed illegal or did not prohibit Registrar to register the sale deed. Admittedly, the civil litigation is pending and therefore, if consider the complaint as it is, it seems that *prima facie* no offence is made out against the accused. Therefore, the complaint is liable to be dismissed under Section 203 of the Code of Criminal Procedure. I,

therefore, pass the following order. Accordingly, the complaint was dismissed under Section 203 of the Code of Criminal Procedure.”

7. The applicant in person has argued at length. Pointing out the history of litigation, he would argue that the name of his mother was deleted only for the purpose of execution of the sale deed in conspiracy with the revenue authority. The registering authority ought to have noticed the *lis pendens* notice registered with it. The Talathi has played a fraud. His explanation was that the name of his mother was inadvertently deleted has no base. However, the learned Chief Judicial Magistrate, Ahmednagar did not consider the material collected by the police during the enquiry under Section 202 of the Code of Criminal Procedure as well as the documents placed by him on record. There is apparent error on the face of record.

8. The learned counsel for the respondent No.14 Sub Registrar has argued that the role of the Sub Registrar is limited. The notice of the *lis pendens* does not prohibit him from registering the document. No relief was sought under Section 156(2) of the Code of Criminal Procedure. The allegations levelled against the respondents do not constitute alleged offence. The parties might have committed crime but not the Sub Registrar. No offence is made out against the Sub

Registrar.

9. The learned counsel for respondent No.13 has vehemently argued that it was purely a civil litigation, therefore, the learned Chief Judicial Magistrate, Ahmednagar has correctly dismissed the complaint. The entry in the name of the mother of the applicant was cancelled. There is no substance in the petition. Hence, the petition may be dismissed.

10. The Advocate for the respondent Nos. 1 to 8 has adopted the arguments of other respondents.

11. It appears from the impugned order that, the learned Chief Judicial Magistrate was of the opinion that there should be no simultaneous proceeding under the Civil and Criminal law. It is settled law that the aggrieved person has both the remedies under Civil as well as Criminal law. The civil remedy is expected to be opted by the applicant by the learned Chief Judicial Magistrate does not include the sentence of imprisonment and fine for criminal proceeding is not always commensurate the reliefs in a civil suit. Since the law does not debar the aggrieved to proceed both in Civil Court as well as Criminal Court, the impugned order appears apparently erroneous.

12. As far as the power under Section 203 of the Code of Criminal Procedure is concerned, the Court is bound to go through the report if called under Section 202 of the Code of Criminal Procedure. There are number of statements on record supporting the documents. The Chief Judicial Magistrate is of the opinion that the Magistrate can dismiss the complaint only when he is of the opinion that there is no sufficient ground for proceeding. Perusal of the documents placed on record, statements of the witnesses, the applicant, and the evidence collected by the police along with the document of correction deed *prima facie* shows that at the time of the alleged sale deed, the 7/12 extract attached to the sale deed did not have the entry in the name of the mother of the complainant. Firstly, the sale deed was registered deleting the name of the mother of the applicant on 7/12 extract, then the correction deed was registered with the Sub-Registrar, explaining that the entry of the name of the mother of the applicant was inadvertently deleted. Record *prima facie* reveals that some mess has been created by the revenue officer i.e. the Talathi in conspiracy with the remaining non-applicants. *Prima facie* sufficient ground is available to proceed with the matter. However, the learned Chief Judicial Magistrate, Ahmednagar ignored the documents placed on record and passed the impugned order which is illegal, incorrect and

improper, therefore, it needs to be set-aside. Hence, the following order.

ORDER

- (i) The revision Petition is allowed.
- (ii) The impugned order dated 16.02.2015 passed by the learned Chief Judicial Magistrate, Ahmednagar is quashed and set aside.
- (iii) The complaint be remitted back to the learned Chief Judicial Magistrate, Ahmednagar.
- (iv) The learned Chief Judicial Magistrate, Ahmednagar shall issue process against the respondents except Sub-Registrar for the offences made out from the record, within a month from the receipt of this writ.
- (v) Both parties are directed to remain present before the learned Chief Judicial Magistrate Ahmednagar on 21st of March, 2023.
- (vi) Record and proceedings be returned to the Court of learned Chief Judicial Magistrate, Ahmednagar.

(S. G. MEHARE)
JUDGE