

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

CRIMINAL APPLICATION NO. 1458 OF 2022

Manoj Genu Sandhan,
Age – 46 years, Occupation-Service,
R/o. Flat No. A-4, Sadashiv Apartment,
Chhatrapati Chowk, Ambajogai,
Tq. Ambajogai, Dist. Beed. .. Applicant

Versus

- 1] The State of Maharashtra,
Through Police Station Ambajogai
(City), Dist. Beed.
- 2] Vasant Dhondiba Bhavthankar,
Age-87 years, Occupation-Agriculture &
Business,
R/o Housing Society, Ambajogai,
Tq. Ambajogai, Dist. Beed. .. Respondents

Shri Sudarshan J. Salunke, Advocate for the Applicant.
Shri S. J. Salgare, A.P.P. for the Respondent No. 1.
Shri Sharad S. Shinde, Advocate for the Respondent No. 2.

**WITH
CRIMINAL APPLICATION NO. 1637 OF 2022**

Rajesh Narhari Londhe,
Age – 46 years, Occupation-Service,
R/o. House No. 2611, Vidya Nagar,
Near Water Tank, Kaij, Tq. Kaij,
Dist. Beed. .. Applicant

Versus

- 1] The State of Maharashtra,
Through Police Station Ambajogai
(City), Dist. Beed.
- 2] Vasant Dhondiba Bhavthankar,
Age-87 years, Occupation-Agriculture &
Business,
R/o Housing Society, Ambajogai,
Tq. Ambajogai, Dist. Beed. .. Respondents

Shri Sudarshan J. Salunke, Advocate for the Applicant.

Shri S. J. Salgare, A.P.P. for the Respondent No. 1.

Shri Sharad S. Shinde, Advocate for the Respondent No. 2.

**CORAM: NITIN JAMDAR, ACTING CJ &
S. G. CHAPALGAONKAR, J.**

DATE: 21 JULY 2023.

P.C.:

. These two criminal applications are filed to challenge the order dated 02 March 2022 passed by the learned Judicial Magistrate First Class, Ambajogai (Court No. 3) under Section 156(3) of the Code of Criminal Procedure (for the sake of brevity hereinafter referred as to the “Code”) in Criminal Misc. Application No. 505 of 2022 and to quash First Information Report No. 90/2022 dated 04 March 2022 registered with Police Station Ambajogai (City), Dist. Beed for the offences punishable under Section 468, 469 r/w Sec. 34 of the Indian Penal Code.

2. The Applicants are working in the Revenue Department of

the State of Maharashtra. Respondent No. 2, aged 87 years, is the Complainant. Respondent No. 2 filed a complaint bearing Criminal Misc. Application No. 505 of 2021 in the Court of Judicial Magistrate First Class, Ambajogai, against six persons. In this complaint, Applicant in Criminal Application No. 1458 of 2022 was arrayed as accused No. 5, and Applicant in Criminal Application No. 1637 of 2022 was arrayed as accused No. 6. In the complaint, the Complainant stated that five accused, including the Applicants together, had created false record. The Respondent No. 2/Complainant alleged that he and his brothers Narhari, Vishnu and Kishan purchased properties bearing Sy. No. 473-A and 473-B are situated at Ambajogai, admeasuring 16 Acres 18 Gunthas and 06 Acres 33 Gunthas, respectively. The Complainant alleged that properties were purchased by registered sale deed on 14 July 1970, and the entries were effected in the revenue record. Thereafter revenue record of these lands was changed, and they were combined with Sy. No 473/1pai/2pai/3/4/5/7. He stated that partition took place, and the Complainant received land admeasuring 01 Acres 31 Gunthas, which was adjacent to the land Sy. No. 473/1 belonging to the father of the accused No. 3/Bhimrao Shankarrao Jadhav. The Complainant alleged that the father of the accused No. 3, i.e. Shankarrao Jadhav had sold 2H 20R land out of land Sy. No. 473/1 in favour of Shankar Nagar Co-operative Society, and after that, no land remained as the entire land was sold. The

Complainant alleged that the accused No. 3 executed a sale deed No. 1144/2021 dated 22 February 2021 in respect of land Sy. No. 473/1pai/2pai/3/4/5/7. It was the allegation that the Applicants materially fabricated the map of the concerned survey number in collusion with other accused. It was stated that no action was taken when the Complainant approached the Ambajogai City Police Station, and thereafter, despite a written complaint, the Superintendent of Police did nothing; hence the Complainant moved under Section 156(3) of the Code.

3. The learned Judicial Magistrate First Class, Ambajogai (Court No. 3), went through the record, documents and considered the submissions of the respondent No. 2/Complainant. It was pointed out that as regards the aspect of sanction, the Complainant had argued that acts committed by the Applicants do not fall within the ambit of official duties, and the fabricated measurement No. 1448/2021 was set aside by the Deputy Superintendent of Land Records by his order dated 27 September 2021. The learned Magistrate came to the prima facie opinion that the acts of the Applicants were outside their official duties. Thereafter having considered the fact that all formalities are completed, he directed the officer in charge of Ambajogai City Police Station to investigate the matter in accordance with the law. Thereafter F.I.R. as above was lodged on 04 March 2022. Thereupon the Applicants are before us with their applications.

4. The learned counsel for the Applicants submitted that the order passed by the learned Judicial Magistrate First Class under Section 156(3) of the Code though revisionable, since the F.I.R. is lodged pursuant to the same, the applications are filed to quash the F.I.R. invoking inherent and extraordinary powers of this Court. Therefore, applications will have to be considered within the parameters of the exercise of extraordinary and inherent jurisdiction to quash the first information report.

5. The learned counsel for the Applicants first sought to argue on the ground of sanction. Thereafter when the learned Assistant Public Prosecutor relied upon the order passed by the Hon'ble Supreme Court in the case of *Manju Surana Vs. Sunil Arora and others*¹, the learned counsel for the Applicants stated that he is not pressing the ground of sanction. Therefore this question does not arise for consideration.

6. The learned counsel for the Applicants then contended that the F.I.R. was lodged pursuant to an order passed under Section 156(3) of the Code by the learned Magistrate, and the learned Magistrate could not have taken cognizance of this application as it was not supported by the affidavit of the Complainant. The learned counsel for the Applicant relied on the decision of the Hon'ble Supreme Court in the case of *Mrs. Priyanka Srivastava*

¹ 2018(2) S.C.C. (Cri) 800

*Vs. State of U. P.*² and *Babu Venkatesh and others Vs. State of Karnataka and another*³. He submitted that when the complaint was not supported by an affidavit, the learned Magistrate ought not to have entertained the application under Section 156(3) of the Code and, therefore, since the order passed by the learned Magistrate itself is bad in law, resultant F.I.R. needs to be quashed without reference to any other facet. The legal contention that the F.I.R. can be quashed on this alone ground is disputed by the learned A. P. P. and the learned counsel for the Complainant, they point out that however this argument in law is irrelevant to the facts of the case because, in this case, the Complainant had filed an affidavit, which is noted in the impugned order itself.

7. The learned Magistrate, in paragraph No. 5 of the impugned order, has specifically stated that he has perused the complaint and the affidavit in support of the complaint. After recording so, the learned Magistrate has stated that the Complainant has complied with the procedure and thereafter has passed the impugned order. There is no reason for us to disbelieve the statement made in the judicial order that an affidavit was filed. If it is a case of the Applicants that an incorrect factual position is recorded in the judicial order, then the heavy burden lies on the Applicants to state the same. In the verification of the application, the Applicants have stated that paragraph Nos. I to X are the

² 2015 AIR SCW 2075

³ (2022) 5 SCC 639

grounds of challenge, based on legal advice; it is on the grounds of challenge that there is a ground regarding non filing of the affidavit of the Complainant. Therefore, there is no merit in the submissions advanced by the learned counsel for the Applicants.

8. The learned counsel then submitted that the complaint does not disclose the ingredients of the offence. The learned counsel for the Applicants relied on paragraph No. 5 of the complaint to state that the ingredients are not made out. However, in paragraph No. 4 of the complaint, the Complainant has in detail stated that the applicants conspired with other accused in creating a fabricated record and manipulated the record by inserting a dotted line in red colour to show a boundary and conspired with other accused to sell the property belonging to the Complainant. Section 468 of the Indian Penal Code deals with forgery, the purpose of cheating and imprisonment of either description, which may extend to seven years. Therefore, it cannot be said that the ingredients of this offence are not pleaded in the complaint. Therefore, this contention is rejected.

9. The learned counsel for the Applicants then submitted that considering the averments in the complaint as they are, no offence is made out against the Applicants, particularly when the act attributed to them is an order which is appealable under the provisions of the Maharashtra Land Revenue Code. He has

submitted that though in the first appeal filed by the Complainant, the order is set aside by the Appellate Authority/Deputy Superintendent of Land Records, Beed the order of the Appellate Authority after that is set aside by the second appellate authority/Deputy Director of Land Records by order dated 19 August 2022. He has submitted that, therefore, it cannot be stated that the Applicants have committed forgery and, therefore, the F.I.R. is required to be quashed. He submitted that considering the fact that the Applicants are Revenue Officers and were entrusted with a task of measurement, and if the task falls within the ambit of their official duties, the matter will have to be viewed from a different perspective.

10. We have given our anxious consideration to the case at hand. It is the specific case of the Complainant that accused No. 3 sold the land to accused Nos. 1 and 2 when firstly, all land was already sold earlier, and by fabricating the documents to create a map, the property of the Complainant was shown as the property of the accused No. 3. Therefore, the manner in which the said map was created by the Respondent Nos. 5 and 6 becomes material. The Complainant alleges that a red dotted line was inserted to create a false demarcation to permit the accused to clandestinely sell the complainant's land.

11. The investigation into this allegation is pending. To

ascertain whether the allegations made by the Complainant have *prima facie* credence, we have looked at the order passed in the first appeal by the Deputy Superintendent of Land Records, Beed, dated 27 September 2021. The Deputy Superintendent of Land Records has observed in his order that the receipt of measurement fee payment is not available in the original record. The notice for issuance of measurement is not available, and the Deputy Superintendent of Land Records has opined that corrections are carried out hurriedly and by collusion. The Deputy Superintendent of Land Records examined the map and stated that red dotted line has been created with ill intention, and there is variance with the statement made by Applicant Londhe with the map. It is stated that immediately the accused No. 1/Hamid applied for police protection. Not only did the Deputy Superintendent of Land Records set aside the map but observed that the manner in which the Applicants created the map was extremely questionable.

12. We have gone through the order passed in the second appeal tendered by the learned counsel for the Applicants. In this order, though the order of the First Appellate Authority is set aside, the second appellate authority/Deputy Director of Land Records, Aurangabad, has not set aside the same in its entirety but remanded the matter. The Deputy Director of Land Records has also taken note of the red dotted line and the fact that there is no

explanation on the map as regards this line. The Deputy Director of Land Records has opened that this aspect needs to be examined in detail. In no circumstance has the Deputy Director of Land Records given any clean chit to the Applicants. Therefore, the genesis of the allegations made in the complaint that the map was created by inserting a red dotted line by the Applicants becomes a matter of investigation. Both the Deputy Superintendent of Land Records and the Deputy Director of Land Records have expressed sense of doubt regarding said red dotted line. Therefore, it cannot be said at this stage of the investigation that no offence whatsoever is made out to curtail further investigation. The Complainant has raised a serious issue, and both the Deputy Superintendent of Land Records and the Deputy Director of Land Records have acknowledged the seriousness of the issue.

13. The fact that the action of a revenue officer involved in the preparation of a map is appealable under the Land Revenue Code cannot be construed as an absolute prohibition against the existence of any criminal intent or forgery on the part of those responsible for executing the map. No such legal principle is shown to us that the availability of an administrative redressal procedure for drawing the map per se negates the possibility of wrongful conduct or criminal intent. While the appellate process serves as a mechanism for addressing grievances, it does not preclude the occurrence of fraudulent or dishonest conduct

during the actual execution of such tasks. The appealability of an action of preparation of a map by the applicants does not act as an absolute shield against the potential commission of offences related to forgery. In cases where there are valid grounds to suspect or allege the involvement of criminal intent or forgery in relation to the preparation of the map, it is necessary to conduct an investigation and ascertain the veracity of such claims.

14. The matter is at an investigation stage, and the same is going on. The power to quash an F.I.R. is to be exercised in exceptional circumstances after careful consideration. It is a discretionary power to prevent the abuse of the legal process and to ensure that justice is served efficiently and effectively. This power should not be used lightly or routinely but to be exercised sparingly and only in rare cases. When a court quashes an F.I.R. at the investigation stage, it terminates the investigation. This power is reserved for situations where continuing with the proceedings would lead to a grave injustice, would be against the principles of fairness and equity, or would be an abuse of the law.

15. Having considered the circumstances, we cannot hold that no case is made out whatsoever by the Complainant and no investigation is necessary, and that the proceedings be quashed.

16. We may note that having heard the matter, we had indicated to the learned counsel for the Applicants on several occasions that we were not inclined to interfere at this stage when the investigation is not yet complete; however, the learned counsel for the Applicants urged the Court to rule on the merits of the matter now itself, therefore, we were required to pen an elaborate order.

17. Both applications are accordingly dismissed.

(S. G. CHAPALGAONKAR, J.) (ACTING CHIEF JUSTICE)

bsb/23 July