

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 703 OF 2023

Machhindra Sonaji Taware

Petitioner

Versus

The State of Maharashtra & others

Respondents

Mrs. Yogita Thorat, Advocate holding for Mr. T. S. Lodhe, Advocate for the petitioner.

Mr. V. S. Badakh, APP for the State.

Mr. D. R. Jayabhar, Advocate for respondents No. 2 to 4.

CORAM : R. M. JOSHI, J.

DATE : 27th OCTOBER, 2023.

PER COURT :

1. This petition takes exception to the order dated 13th April, 2023 passed by the learned Sessions Judge, Ahmednagar in Criminal Revision Petition No. 120/2022 whereby order dated 6th September, 2022 passed by learned Judicial Magistrate First Class, Shevgaon in Criminal M.A. No. 369/2019.

2. Petitioner filed private complaint before the Magistrate against the respondents alleging commission of offence by them. It is

the case of the petitioner that his mother along with her sisters was owner of Gat No. 238 situated at Shevgaon Takli, Tq. Shevgaon. It is alleged by the petitioner in the said complaint that the respondents who are heirs of one of the sisters of his mother executed sale-deed on 12th April, 2016 in favour of the co-accused. It is alleged that the said document was used as evidence. It is further claimed that the purchaser has falsely stated about he being an agriculturist executed the said document.

3. Learned counsel for petitioner submits that the order of issuance of process by learned Magistrate is after considering the material documents placed on record. It is her submission that the learned Revisional Court has exceeded its jurisdiction in causing interference in the said order.

4. Learned counsel for respondents submits that in respect of the said sale-deed civil suit is filed taking exception thereto. It is his submission that even if contentions of the complainant are accepted as it is, no offence is made out against the respondents.

5. Perusal of the complaint and record indicates that even if allegations made in the complaint are accepted to be true, prima facie, no offence is made out under Sections 420, 461, 468 and 471 of Indian Penal Code. Pertinently, dispute in respect of validity of the sale-deed is not challenged before the Civil Court which is competent to decide its validity. The order passed by the Revisional Court to set aside the order of issuance of process therefore cannot be faulted with.

6. This Court, however, finds substance in the contention of learned counsel for the petitioner that without recording any finding about abuse of process of law or complaint being frivolous, a cost of Rs. 3,000/- came to be imposed on the complainant/petitioner. Perusal of the impugned order does not show any finding recorded to that effect for the purpose of imposition of cost. It would not be open for the Court to impose cost unless clear findings have been recorded about abuse of process of law. In such circumstances, this Court finds it appropriate to set aside order of imposition of cost. The impugned order therefore stands modified. Clause (1) of the

operative part of the impugned order is set aside. Rest of the order to remain unchanged. Petition stands disposed of in above terms.

(R. M. JOSHI)
Judge

dyb