

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 944 of 2022

1. Uddhav s/o Tukaram Sarode,
Age : 51 years, Occu. : Service as a Circle Inspector,
R/o Tahasil Office, Parbhani,
Tq. & District Parbhani.
2. Vishnu s/o Haribhau Pakwani,
Age : 45 years, Occu. : Service,
R/o Tahasil Office, Parbhani,
Tq. & District Parbhani.

...Petitioners

Versus

1. Shailendra s/o Laxmanrao Samale,
Age : 44 years, Occu. : Agri.,
R/o Takli (Ku),
Tq. & District Parbhani.
2. Manchak s/o Bapurao Samale,
Age : 44 years, Occu. : Agri.,
R/o Takli (Ku),
Tq. & District Parbhani.
3. Seema w/o Ashokrao Samale,
Age : 34 years, Occu. : Agri.,
R/o Takli (Ku),
Tq. & District Parbhani.
4. Narayan s/o Shrimantrao Gunjkar,
Age : 49 years, Occu. : Agri.,
R/o Vahegaon (Ku),
Tq. Partur & District Parbhani.
5. Bharat s/o Asruba Kate,
Age : 52 years, Occu. : Agri.,
R/o Vahegaon (Ku),
Tq. Partur & District Parbhani.

...Respondents

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Advocate for Petitioner : Mr. Mahesh S. Taur

Advocate for Respondents : Mr. Sudhir K. Chavan

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CORAM : KISHORE C. SANT, J.

RESERVED ON : 13th APRIL, 2023.

PRONOUNCED ON : 6th JUNE, 2023.

JUDGMENT :

1. Rule.

2. Rule made returnable forthwith. Heard by consent of the parties.

3. The present petition is filed by original accused no. 5 and 6 in R.C.C. No.280/2013 pending before the learned Judicial Magistrate First Class, Parbhani. Both the accused are public servants.

4. The facts in short are that respondent no.2 filed Criminal Miscellaneous Application, seeking direction under Section 156(3) of the Code of Criminal Procedure for the offences punishable under Sections 464, 468, 474, 420,

218 read with Section 34 of the Indian Penal Code. It is alleged in the said application that the complainant has dispute over a land with his brothers and on that various proceedings were filed. There was already a partition in the year 1993 and mutation was taken in the name of father of the complainant. In the revenue proceedings, mutation entry taken in the name of complainant bearing no. 4645, was maintained as it is. However in spite of that accused no.1 sold the land in favour of accused no.2. Accused no.3 and 4 though were aware of this position, still they have signed as witness to the said documents. Accused no.1 and 2 thereafter filed application for recording their names in the revenue record on the said property. It is alleged that accused no.5 and 6 i.e. present petitioner nos. 1 and 2 were working as Talathi and Circle Officer respectively, have taken entries in the name of accused no.2 in spite of having knowledge that accused no.1 had no right over the property.

5. The learned Magistrate, Parbhani recorded verification of the complainant and passed an order of issuance of process

against the present petitioners only for the offence punishable under Section 218 of IPC and against other accused for the offences punishable under Sections 464, 468, 474, 420 of IPC. The present petitioners filed Revision Application No.110/2013 in the Court of learned Sessions Judge, Parbhani, challenging order of issuance of process. Other accused persons filed Revision Application No.43/2013. The learned Additional Sessions Judge, Parbhani rejected both the Revisions. These petitioners therefore filed Criminal Writ Petition No.1213/2013 in this Court, whereas the other accused persons filed Writ Petition No.1215/2013. Vide order dated 25.02.2014, this Court considering the case in details, dismissed both the petitions. This Court in paragraph no.8 of the said order in Writ Petitions, specifically observed that the provisions of Section 218 of IPC are definitely attracted. Further it is observed that there is material in support of the allegations that these two revenue officers had joined hands with the accused no.1 by making a wrong entry, which created one more dispute. It is observed that there is sufficient

material for issuing process for the offence punishable under Section 218 of IPC. The parties thereafter even approached the Hon'ble Apex Court. However even their petition came to be dismissed.

6. After loosing the matter in the Hon'ble Apex Court, as against the order of issuance of process, the present petitioners filed application for discharge. The learned J.M.F.C., Parbhani allowed the said application holding that since no sanction under Section 197 of Cr.P.C., was obtained against the present petitioners. By order dated 24.01.2018, the petitioners came to be discharged.

7. Respondent no.1 being aggrieved by the order of discharge, filed Criminal Revision No.49/2018 in the Court of learned Additional Sessions Judge, Parbhani. The learned Additional Sessions Judge by impugned order allowed the said Revision and quashed and set aside the order discharging present petitioners and directed the trial Court to proceed with against the petitioners. It is discussed that the act

done by the present petitioners is beyond the purview and ambit of official duties as public servant. It is observed that both these petitioners had knowledge that the alleged sale deed was forged and fabricated. Against that, the present petitioners have come to this Court.

8. The learned Advocate for the petitioners submits that the petitioners were working as public servants. They have only taken the entries in the revenue record pursuant to the sale deed duly executed and registered before the Sub-Registrar. The act of taking entries comes under the discharge of their official duties. Once they have discharged the official duties, the said act cannot be said to be act, not falling under discharge of duties. Under such circumstance, in view of Section 197 of Cr.P.C., no Court can take cognizance of the offence without prior sanction from the competent authority. In this case, admittedly no sanction is obtained prior to filing of the complaint and therefore the learned Magistrate had rightly passed an order discharging the present petitioners. He submits that the

authorities in fact were bound to take entries on the basis of the sale deed creating rights in favour of the parties. Taking entries in the revenue record on the basis of registered sale deed can in no case be an offence. Assuming that the entries are wrongly taken, there are remedies open to challenge the entries. The respondents could have resorted to other remedies. Instead of that he is directly approached the Criminal Court. In such circumstances, no Court can take cognizance of alleged offences.

9. The learned Advocate for the petitioners has relied upon the judgment in the case of **T S K Reddy Vs. State of Maharashtra**, reported in LAWS(BOM)-13-7-248. In that Government had refused to grant sanction for prosecution of the applicants therein. In spite of that the learned Special Court had refused to discharge the accused persons. The Court had considered that whether Section 197 of Cr.P.C. is required when the party has acted in the course of discharge of official duty. The Court observed that the official duty

implies that the act or omission must have been done by the public servant in the course of discharge of his duty. It is further observed that Section 197 does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

10. The learned Advocate for the respondent submits that the sale deed is dated 11.10.2010. On the basis of sale deed, the mutation entry i.e. 4645, was taken on 17.01.2011. The objection was taken to the sale deed, however still the entry was certified on 14.08.2012. The mutation entry 4832 is taken on the basis of subsequent sale deed, which is allegedly false as it is executed by person having no title to or possession over the property. This act of taking entry on the basis of subsequent sale deed clearly shows that the accused have committed an offence. He therefore submits that the offence was clearly made out and therefore though the petitioners on the earlier occasion had approached

various Courts they lost even in the Hon'ble Supreme Court. He submits that the learned Sessions Judge has rightly taken into consideration the judgments cited him. He prayed for rejection of the petition.

11. The learned Advocate for respondent no.1 points to paragraph no.18 and 19 of the judgment in the case of T S K Reddy (supra) cited by the learned Advocate for the petitioners. He submits that in that case there was specific refusal by the Government to grant sanction under Section 197 of Cr.P.C. and therefore the Court has held that those accused could not have been prosecuted. The second aspect considered was that the complainant himself had filed an affidavit stating that he had no interest in prosecuting the applicants and by considering the said, the application for discharge was allowed.

12. The learned Advocate for respondent relied upon two judgments. The first judgment is in the case of **Inspector of Police and Another Vs. Battenapatla Venkata Ratnam and**

Another, reported in 2015 AIR (SC) 2403. The Hon'ble Apex Court in that case held that the alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss of the Revenue. It was held that the public servants have, in fact, been treated as special category under Section 197 CrPC, to protect them from malicious or vexatious prosecution. Such protection from harassment is given in public interest; the same cannot be treated as shield to protect corrupt officials.

. The second judgment is in the case of **Alka Udhav Khaire and Others Vs. State of Maharashtra and Another**, reported in 2017 All.M.R.(Cri) 3893. This Court found that prior sanction in terms of section 197 of Cr.P.C., was not required to initiate criminal case against the public servants. The correctness or veracity of the allegations is not amenable within the jurisdiction of this Court while exercising the inherent powers under Section 482 of Cr.P.C. In that case,

the allegation was that the applicants were employees of the Municipal Council. They had indulged in the offence of forgery for the mischief of cheating and misappropriation of public funds and thereby committed the Criminal Breach of Trust etc. This Court held that manipulating the log book of vehicles and showing excess use of fuel, certainly does not come under the official discharge of duty.

13. As against these petitioners, the allegations are that when the application was moved for taking entries in the name of complainant, no prompt action was taken. Whereas on the basis of subsequent sale deed, immediately entries were taken, when they had knowledge that the subsequent sale deed is between the parties, who had no right over the property. The question therefore arises as to whether the alleged act of the petitioners can be said to be act done while discharging their official duties. It appears that the petitioners were discharging their official duties.

14. This Court finds that though the present case arises out

of discharge application, but still the complaint was scrutinized by this Court, while dealing with this case in Criminal Writ Petition No.1213/2013. Though it was petition challenging the order of issuance of summons, the Court had an occasion to consider whether the allegations taken as it is make out case for issuing summons and had held that taking allegations as it is, it does not show that the act alleged against the present petition, fall within the discharge of official duty. Even while giving application for discharge, the consideration was only that as to whether for want of Section 197, petitioners can be prosecuted. An issue has attained finality till the Hon'ble Apex Court wherein the judgment of the High Court was challenged. This Court therefore finds that when this Court in earlier petition has held in clear terms that the act alleged against the petitioners can not be said to be act committed in discharge of official duty, there is no reason to take another view. It would not be proper to open the said issue merely because even now it is at different stage i.e. at the stage of discharge application, since in this case the

considerations are the same. The only course open for the Magistrate was to see as to whether there is material on record or not. It could not have been gone into the aspect of provision of Section 197 of Cr.P.C. This Court finds that the learned Magistrate had clearly erred in allowing the discharge application. The learned Additional Sessions has rightly considered all these aspects. No perversity or illegality is found in the order of learned Additional Sessions Judge, Parbhani.

15. Considering all these aspects, this Court finds that no case is made out to call for interference and the petition deserves to be dismissed. Hence the following order.

ORDER

(i) The petition is dismissed. Rule stands discharged.

[KISHORE C. SANT, J.]

NAJEEB...