

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

CRIMINAL WRIT PETITION NO. 890 OF 2021

1. Sk. Muzzafarpasha s/o Sk. Janipasha,
2. Sow. Naseem begum d/o Bakhtyar Inamdar
(W/o Sk. Muzzafarpasha)

VERSUS

1. Sk. Jafarpasha s/o Sk. Ibrahim
2. State of Maharashtra
Through Police Inspector,
Police Station, Shivaji Nagar, Dist. Beed.

Mr. G. K. Naik Thigle, Advocate for the petitioners
Mr. S. N. Morampalle, APP for the respondent/State
Mr. S. B. Solanke, Advocate for respondent No.1

CORAM : R. M. JOSHI, J.
DATE : 14th JULY, 2023

P.C. :-

1. This petition is filed under Section 482 of Cr.P.C. for quashment of proceeding being Criminal M.A. No. 732/2012 and R.C.C. No. 390/2013 for the offences punishable under Sections 420, 468, 471 r/w 34 of Indian Penal Code (For short 'IPC').

2. It is case of the petitioners that the complaint came to be filed by respondent No.1 against them with the allegations in respect of the property bearing No. 1-3-404 situated at Mohalla Barshi Road, Beed. It is alleged that the complainant had purchased the said property from

Shaikh Janipasha Shaikh Ibrahim who is father of petitioner No.1. Shaikh Janipasha Shaikh Ibrahim died on 10/05/1997. It is alleged against the petitioner No.1 that by making bogus signature and in the name of deceased person a document was prepared and on the basis of which the property in question was mutated in his name in the record of the Municipal Council. It is further alleged that petitioner No.1 executed Hibanama in favour of petitioner No.2 who is his wife. On the basis of these allegations process came to be issued against the petitioners.

3. Learned counsel for the petitioners states that the dispute in question is essentially a civil dispute and the complainant has given colour of criminality to the same. It is submitted that civil dispute is pending in respect of the property in question and that the complaint is not tenable and deserves to be quashed. In support of his submissions he placed reliance on the judgment in case ***Usha Chakraborty and Ors. Vs. State of West Bengal and Ors., MANU/SC/0079/2023, Govind Prasad Kejriwal Vs. State of Bihar and Ors., MANU/SC/0112/2020, M. Srikanth Vs. State of Telangana and Ors., MANU/SC/1446/2019, Ramesh Chandra Tupta Vs. State of U.P. and Ors., MANU/SC/1551/2022.***

4. Learned counsel for the respondent opposed the said contention by submitting that in the instant case after filing of the

complaint an order came to be passed on 10/09/2012 calling upon report from the concerned police station and thereafter process came to be issued by order dated 01/03/2013. It is contended that after the period of about 9 years the quashment of the proceeding is sought by the petitioners. It is further contended that there is no challenge to the sale deed executed in favour of complainant by father of the petitioner No.1. By referring to the documents placed on record it is contended that on the basis of false document the name of the petitioner No.1 came to be entered into PR card and hence prima facie case is made out against him. As far as petitioner No.2 is concerned, it is contended that she is wife of petitioner No.1 and in collusion she had obtained gift deed in respect of the said property from petitioner No.1. Thus, it is his contention that this is not a case wherein the inherent jurisdiction of the High Court can be exercised from the quashment of the proceeding.

5. At the outset it needs to be considered that the application under Section 482 of Cr.P.C. cannot be rejected only on the ground that the same has been filed after nine years of the filing of the original proceeding. In this case, it is pertinent to note that after issuance of process in RCC No. 390/2013 an application was made for recall of the same however came to be rejected by the learned Trial Court by order dated 17/02/2020. Thus, it cannot be said that there was any intentional

delay on the part of the petitioners in filing present application. The objection raised regarding the maintainability of the petition therefore deserves rejection.

6. Law on the point of the entertainment of petition under Section 482 of Cr.P.C. for quashment of criminal complaint is fairly settled by now. Time and again it is held that where prima facie no offence is made out from the allegation in the complaint and the supporting documents thereto, the inherent powers may be exercised by the High Court for quashment of such proceeding to prevent abuse of process of court. It is also necessary for the Court to accept the allegation as it is and on the basis of the same if no offence is made out in such circumstance only the proceeding could be quashed.

7. In the instant case perusal of the complaint shows that there are specific allegations against the petitioner No.1 that by using the false document has mutated his name in the record of Municipal council in respect of the suit property. It is alleged in the complaint that the father of petitioner No.1 had sold the said property to the complainant and after death of original owner, petitioner No.1 on the basis of false documents entered his name in the property card as owner of the said property. Thus, the allegations against petitioner No.1 are specific and which prima facie attracts the offences punishable under Section 420, 468 and 471 of

IPC. Thus it is not a case for quashment of the proceeding against petitioner No.1.

8. As far as petitioner No.2 is concerned there is absolutely no allegation against her that she was instrumental, aided or abetted the petitioner No.1 in getting his name mutated in the record of Municipal Council on the basis of false documents. The only allegation against petitioner No.2 is that the petitioner No.1 executed Hibanama in her favour of the same property. For want of specific allegation against petitioner No.2 of conspiracy or abatement to the petitioner No.1 for committing the crime no offence can be said to be made out against her. In such circumstances, continuation of the proceeding against petitioner No.2 would be sheer abuse of process of Court. By following the judgment in case of ***State of Harayana and others Vs. Ch. Bhajan Lal and others, 1992 AIR 604*** it is a fit case for quashment of the proceeding qua petitioner No.2. Hence the order.

ORDER

- (i) Petition is partly allowed.
- (ii) R.C.C. No. 390/2013 is quashed qua petitioner No.2.
- (iii) Petition is rejected qua Petition No.1.

(R. M. JOSHI, J.)

ssp