

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

901 CRIMINAL WRIT PETITION NO.1095 OF 2022

**DEVENDRA AJITKUMAR PARAKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. Satej S. Jadhav, Advocate for the petitioner
Mr. S. P. Brahme, Advocate for the respondent Nos. 2 to 4
Mr. V. P. Latange, Advocate for the respondent No.5
Mr. P. N. Kutti, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 07th FEBRUARY, 2023

P. C.

1. By consent of the parties, the matter is taken up for final disposal at the admission stage.

2. In this petition the petitioner has challenged an order passed by the learned CJM, Jalgaon dated 10-06-2022 thereby rejecting the prayer to direct the police to conduct an inquiry under Section 156(3) of the Code of Criminal Procedure. Learned CJM, has instead directed the complainant to examine himself and witnesses if any as per Section 200 of the Cr. P. C. learned CJM, further directed to police to conduct an inquiry under Section 202 of the Cr. P. C. and to file report.

3. Learned advocate for the petitioner submits that looking to the allegations against the respondent it was necessary to direct the investigation at the hands of the police since cognizable offence is made out.

4. The facts alleged in the application are that respondent No.2 and 4 are uncles, respondent No.3 is cousin, of the petitioner. It is alleged that because of family settlement it was decided to sale a plot No.31, Survey No. 479/A, Mehrun Shivar owned by joint family. For executing a sale deed complainant his mother and brother were taken to the Sub-Registrar Office where accused No. 5 is working as Sub-Registrar. After the sale deed was executed at 03.03 pm on 10-01-2022 immediately within seven minutes they were again called under the pretext that some signatures are still required on same documents and were asked to make signatures of petitioner, his mother, and brother and under that pretext immediately another document was executed. After going through the copy of the document he realized that this was a document was a relinquishment deed in respect of plot No. 10, Survey No.496/3b from Mehrun Shivar. It is alleged that this relinquishment deed was prepared without knowledge of the petitioner, his mother and brother. He, therefore, lodged the complaint for the offences punishable under Sections 420, 406, 465, 467, 468, 472, 477, 386, 120(b) read with Section 34 of the IPC and prayed for direction under Section 156(3). The

learned CJM vide impugned order rejected the prayer under Section 156(3) as already stated and directed an inquiry under Section 202. It is observed that though accusation is of cognizable offence, it is not necessary to direct the investigation under Section 156(3). It is further observed that allegations revolved around the registration of documents in respect of execution of documents and since the entire case is based upon documentary evidence.

5. Learned advocate for the petitioner submits that unless the investigation is directed under Section 156(3) it would not be possible to bring on record the evidence. There are recording of the telephonic conversation between the parties. There is allegations that respondent No. 5 while executing the second documents was in fact acted in stern manner. He in fact pressurized the informant-applicant and his relatives to sign the documents. This things can be investigated only by the police under Section 156(3).

6. Learned advocate for respondent Nos. 2 to 4 vehemently opposed the petition. His submission is that in view of the family settlement both the documents are executed. He invited attention to the affidavit executed by the informant, his mother and brother showing that parties were conscious of the documents and it's contents when documents were signed. He also pointed out that respondent No.5 has taken care to see that

the contents of the documents are understood by specifically asking as to whether the executants know it is relinquishment deed to which they answered in yes. He submits that there is nothing to doubt intention of accused No. 5 when he has acted as a public officer. It clearly seen from the endorsement that executants were aware of nature of the documents. He further submits that now even civil suit is filed by the petitioner bearing Civil Suit No. 89/2022 based on same documents for cancellation of relinquishment deed. He further submits that by the order the court has only postponed the issuance of process and it is not the proceeding is totally closed. Under Section 202 inquiry is also directed which also gives sufficient power to police to make proper investigation.

7. Mr. Latange, learned advocate for respondent No.5 submits that respondent No.5 is responsible officer and his role is only limited to see that documents are voluntarily executed before him. He invites attention to Section 32 of the Indian Registration Act. He submits that in view of Section 32 role of the officer is limited only to verify the documents and that the persons signing the documents are signing without pressure.

8. Learned APP submits that the petition is not maintainable as the remedy of filing revision application is available. He further submits that the court has rightly passed the order by taking care of all the rights of the parties. The court

has rightly directed the police to conduct an inquiry under Section 202 of the Cr. P. C. and thereby no prejudice would be caused to the parties and prays for rejection of the petition.

9. Having considered submissions and the impugned order, this court finds that the learned CJM has chosen to adopt a proper course. No illegality or perversity is found in the order. Ultimately it is discretion of the court while passing the order as to which course is to be adopted. The court has therefore, adopted one which it felt proper in the facts of the case. As it is the dispute is between the family members. A civil suit is already filed where again the question would be decided as to whether the document of relinquishment deed is executed by fraud or voluntarily. Secondly the court has not completely closed the doors of the petitioner by passing the order. Therefore, no case is made out for causing interference under Article 227 of the Constitution of India. The criminal writ petition, therefore, stands dismissed.

[KISHORE C. SANT, J.]

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