

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

CRIMINAL WRIT PETITION NO.1146 OF 2022

1. Jagannath @ Jagan Vitthal Shinde, ...PETITIONER
Age-55 years, Occu-Business,
R/o. Shinde Galli, Padhegaon,
Aurangabad

VERSUS

1. Fulchand Popatlal Tupe, ...RESPONDENTS
Age-40 years, Occu-Business,
2. Bhausahab Ranoba Magar,
Age-45 years, Occu-Business,
3. Gorakshanath Suresh Deshmukh,
Age-42 years, Occu-Business,
All R/o. In front of Chinar Garden,
Varad Bar and Restaurant Padhegaon,
Aurangabad
4. The State of Maharashtra,

Mr. Satej S. Jadhav, Advocate for the petitioner
Mr. P. N. Kutti, APP for the respondents/State
Mr. M. A. Manjramkar, Advocate for respondent Nos. 1 to 3

CORAM : KISHORE C. SANT, J.

RESERVED ON : 20-03-2023

PRONOUNCED ON : 18-04-2023

JUDGMENT

1. Heard the learned advocates for the parties.
2. Rule.
3. Rule made returnable forthwith by consent of the parties.
4. This petition is directed against the judgment and order passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision Application No. 103 of 2022. The learned revisional court by way of impugned order has dismissed the revision application confirming the order passed by the learned Judicial Magistrate, First Class, Aurangabad rejecting the prayer to issue directions under Section 156 (3) of the Code of Criminal Procedure and directed to place the complaint for verification of the complainant. The petitioner-original complainant is therefore before this court.

5. Facts in short are that;

a] The complainant filed application bearing Cri. Misc. Application No. 31/2022 with the allegations that he is owner and possessor of the land bearing Gut No. 2 at Rawaspura Taluka & District Aurangabad, adm. 29-Gunthe. Even in the 7/12 extract the land is shown in the name of the petitioner. The complainant executed power of attorney in favour of respondent No.1 for development of land. However, since respondent No.1 was not doing the work as per terms he cancelled said power of attorney by giving paper proclamation on 29-04-2021. The petitioner also issued registered notice to respondent No.1. He was also informed respondents orally about cancellation of power of attorney.

b] However, respondent No.1 filed a regular civil suit bearing No. 518/2021 against the petitioner and his sons on receiving documents alongwith summons. The petitioner was shocked to see that respondent No.1 filed a forged agreement to sale

purported to be dated 09-10-2019. Said agreement was executed on bond paper purchased by the petitioner. It is the case of the petitioner that he has never purchased the said bond. Thus it is clear that respondents has purchased stamp paper by sending some persons posing to be a petitioner. He therefore filed a complaint for personation, forgery etc. The petitioner had been to the police station by making complaint in writing. No cognizance was taken by the police. The petitioner therefore, personally met with the Police Commissioner, Aurangabad and filed a complaint in writing. The police authorities further refused to take complaint stating it to be a dispute of civil nature.

c] Since the police did not take any cognizance the petitioner filed a complaint and sought direction to the police to register the offence for the offences punishable under Sections 406, 420, 468, 416 read with Section 34 of the Indian Penal Code.

d] The learned JMFC, Aurangabad on reading the complaint

found that no case is made out to issue direction under Section 156(3) as the case is totally based on documentary evidence. The documents are already on record etc.

e] The petitioner therefore, filed a revision application in the court of learned Additional Sessions Judge, Aurangabad. The learned Additional Sessions Judge, Aurangabad by judgment and order dated 02-07-2022 dismissed the Cri. Revision Application. The petitioner thus is before this court.

6. It is the submission of the petitioner that when the case was clearly made out showing that offence under Sections 420, 406, 416, 468 read with Section 34 of the IPC is clearly made out it was necessary for the learned Magistrate to pass an order directing the investigation at the hands of the police. He submits that allegations are of forgery, personation etc. which requires investigation at the hands of police. It is necessary to bring on record as to who has purchased this bond in the application and who has made signatures of the petitioner on

the agreement etc. Scope of enquiry under 202 is limited. In the investigation the police can even take custody of the accused persons and can also effect recovery etc. if required under section 27 of the Evidence Act.

7. As against this, it is the case of the respondent that the learned Magistrate and revisional court have rightly passed orders. It is clearly a case that the petitioner had executed General Power of Attorney which is allegedly cancelled subsequently. Thus, execution of the documents is accepted. Whatever action is taken by respondent No.1 is on the basis of General Power of Attorney that was executed in his favour. Thus, this is in fact dispute of civil nature. There is no criminality involved in this case. From the complaint it is seen that the complaint is only about the documents. In the complaint there are no allegations against respondent Nos.2 and 3. They are shown as accused only with a view to harass them. Parties are already litigating before the civil court and in this view of the matter all the questions will be considered by the civil court.

There are two suites one is Special Regular Civil Suit No. 262/2020 filed by Subhash Laxman Tupe and others. Second is suit bearing Regular Civil Suit No. 1009/2018 filed by the respondent No.1 wherein even the orders are passed by the learned Magistrate directing the defendants therein not to create obstructions in the construction of respondent No.1 and in possession of respondent No.1. Thus, it is submitted that not only respondent No.1 is in possession but he is also carrying out the construction. There is also a Regular Civil Suit No. 518/2021 filed by respondent No.1 against the petitioners and his son in respect of land under dispute in this complaint. There also the learned Magistrate has passed an order granting temporary injunction restraining the defendants from causing obstruction to the construction work over the suit property and obstructing the possession of the suit property and from creating any third party interest. Thus, it is submission of respondents that it is only on the strength of GPA since now the respondent is doing construction, now the petitioner want to create obstruction in the said land.

8. Considering all above aspects it appears from the admitted facts that GPA was executed and was registered bearing No. 11778/2019 in favour of the respondent No.1 on 06-12-2019. Subsequently a notice was issued for cancellation as stated in earlier para and therefore, suit was filed against the present petitioner and his son. The learned Magistrate in these facts had applied his mind to the case. From looking to the order passed by the learned Magistrate and learned Additional Sessions Judge both the courts have concurrently passed the order that no investigation is necessary at the hands of the police and has placed the matter for verification. This court does not find that a case is made out to direct the police to investigate offence. Parties are already litigating in the civil courts. The petitioner has brought on record even copy of gift deed executed by petitioner in favour of his son Vishal with consent by other two sons namely Atul and Akash on 08-07-2022. There is also mutation entry effected on the basis of gift deed. The respondents have filed appeal before the Sub-Divisional Officer

at Aurangabad in respect of mutation entry. So on all these things it is seen that it is a dispute of civil nature.

9. This court holds that both the courts therefore have rightly passed the orders and held that it is not necessary to issue direction to investigate the matter. The court after recording verification can always direct an enquiry under Section 202 at the hands of the police. This court finds that in this fact of the case no illegalities are seen to have been committed by both the courts below and no interference is called for in the impugned order. Rule, is therefore discharged and the writ petition is disposed off.

[KISHORE C. SANT, J.]

VishalK/criwp1146.22