

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

40 CRIMINAL WRIT PETITION NO.1520 OF 2022

AMINABI W/O SHAIKH MOHAMMAD PINJARI
age 58 yrs, Occ. Household,
R/o S.No.237/B, Near Khajamiya Dargah,
Ganesh Colony, Taluka & Dist. Jalgaon.

VERSUS

1. THE STATE OF MAHARASHTRA
2. Mohammad Iqbal s/o Abdul Rahim
age 58 yrs, Occ. Business.
3. Mohammad Sadik s/o Abdul Rahim
Deleted vide order dated 19.1.2023.
4. Kalimuddin s/o Ghiasuddin Shaikh,
age 65 yrs, Occ. Business.

all respondents are r/o Jalgaon Lime
Depot Next to Fundaram Sweets,
11, Mitranagar, Opp. Dr. Ambedkar
Garden, Khajamiya Dargah Road,
Jalgaon.
Tq. & Dist. Jalgaon.

5. Nasirkhan s/o Akbar Khan Tadwi,
age 54 yrs, Occ. service,
R/o 3rd Floor, Unity Chambers,
Near Khajamiya Dargah Road,
Jalgaon, Tq & Dist Jalgaon.
6. Mohammad Yasin s/o Yusuf Khan Aksanagar
age 43 yrs, Occ. business.
R/o Mehrun Jalgaon, Tq. & Dist Jalgaon.
7. Shoukatkhan s/o Afzalkhan
age 54 yrs, Occ. Business,

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R/o Mullaji Plot, Next to Hotel Apna,
Ganesh Colony, Jalgaon.

8. Sarfarazkhan s/o Etbar Tadwi,
age 43 yrs, Occ. Helper,
R/o ST Workshop, near Muslim
Kabrastan, Tq & Dist Jalgaon.
9. Shaikh Hanif Raja s/o Shaik Rafik,
age 38 yrs, Occ. Business,
R/o c/o Shoukatkhan Afzalkhan
Mullaji Plot Next to Hotel Apna,
Ganesh Colony, Jalgaon.
10. Salim s/o Bapumiya Patel,
age 54 yrs, Occ. service,
R/o B-4 and 5, 2nd floor, Shantiben
Apartment, Behind Gangopi Apartment,
Ganesh Colony, Jalgaon.
11. Rajan s/o Not know Naryan
Deleted as per order dated 19.1.2023.

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Advocate for Petitioner : Ms. R.S. Kulkarni
APP for Respondents : Ms. P.J. Bharad
Advocate for Respondents 2, 4-10 : Mr. V.B. Kulkarni

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: December 01, 2023

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PER COURT :-

1. The original complainant in RCC No.590 of 2007 is assailing the order dated 9.10.2012 passed by the learned Judicial Magistrate First Class, Jalgaon thereby rejecting the complaint so far as original accused nos.5,9 and 10 which has been further confirmed in revision by the learned Sessions Judge, at Jalgaon vide order dated 12.4.2022.

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2. Learned advocate appearing for the petitioner vehemently contend that the petitioner is a lady. She has purchased a property admeasuring 3200 square feet from the survey no.237/B situated at Jalgaon under the registered sale deed from one Yasin Shah Lal Shah, who was original owner. There is a house constructed on it. Property was a private ownership property and it has nothing to do with Wakf or Dargah, however, accused persons have attempted to show it to be the Wakf property misusing old 7/12 extracts. She would further submit that already competent authorities have decided status of the property to be private property, however, accused persons are leaving no stone untouched to canvass status of the property to be Wakf property. She would submit that although the complainant is absolute owner of the property, accused persons made a false application to Wakf Board with prayer for inclusion of her property as Wakf Property suppressing previous orders passed by the competent authorities declaring the disputed property as a private property. All these activities are inconsistent of section 36 of Wakf Act with intention to collect the rent. She would submit that the petitioner had filed a complaint with aforesaid averments against accused persons for the offence punishable u/s 415, 417, 418, 419, 420, 425, 447, 448, 464, 466, 468, 482, 511 r/w 34 of the IPC. However, learned Magistrate issued process only against accused nos.1,2,3,4,6,7 and 8 for the offence punishable under sections 417 and 426 read with 34 of the IPC while dismissing the complaint against accused nos.5,9 and 10 vide order dated 9.10.2012 passed by the learned JMFC, Jalgaon. She further

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submit that aforesaid order of dismissal of the complaint was subjected to challenge before the Sessions Judge, Jalgaon in criminal revision application no.188 of 2014, which came to be dismissed vide order dated 12.4.2022.

3. Learned counsel appearing for the petitioner would urge that specific role is attributed against the accused nos.5,9 and 10. Accused no.10 was the President of Wakf Committee, accused no.9 was the Proposer in meeting for registration of the property and accused no.5 had published Jahir Pragatan (public notice) and appended his signature on the documents. As such, according to her, accused nos.5,9 and 10 alongwith other accused persons have played vital role in commission of the offence. Dismissal of the complaint against them is improper.

4. Learned advocate appearing for the respondents support the order passed by the trial court as well as the revisional court. He would submit that the averments in the complaint are vague. Neither averment nor had documents to specify exact role of accused nos.5, 9 and 10. The trial court has rightly declined to issue process against them. Learned Sessions Judge pleased to endorse the view taken by the trial court. He would therefore submit that there are no grounds to interfere in writ jurisdiction of this Court. During course of arguments, it is brought to the notice of this court that accused no.10 is no more. Therefore, writ petition can be considered

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only as regards to accused nos.5 and 9 (present respondent nos.9 and 10).

5. Having considered the submissions advanced and on perusal of the record, it can be gathered that complainant is alleging that she is absolute owner of the property situated at survey no.237/B as per sale-deed executed in her favour by original owner. Her contention is that respondent/accused persons inspite of knowledge regarding nature of the property are attempting to show the property to be the Wakf property and making false and frivolous application to the Wakf Board. An application dated 28.12.2006 was made for that purpose. Property of complainant was included in map appended to said application to depict her property to be part and parcel of the Wakf property.

6. I have considered allegations in the complaint which appears to be implicating all accused persons. The learned Magistrate considered contents of the complaint alongwith the documents annexed thereto. Learned Magistrate observed from the material available on record that offence punishable under section 417 and 426 may be attracted against accused nos.1,2,3,4,6,7 and 8, who were the applicants before the Wakf Board. It is specifically observed no case is made out against accused nos.5,9 and 10. Resultantly, the complaint came to be dismissed against them. When said order was subjected to revision before the Sessions Court at Jalgaon, learned Sessions Judge observed that prima facie, no

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active participation of accused nos.5,9 and 10 could be seen from the documents annexed alongwith the complaint. Accordingly confirmed the order. During course of the arguments before this Court, when this Court pin-pointedly asked the learned advocate appearing for the petitioner to point out specific role of accused nos.5, 9 and 10, no material is brought to notice of this Court; by which prima facie case can be made out against accused nos.5,9 and 10 for the offence punishable u/s 417 and 426 of the IPC. This Court finds that accused nos.5,9 and 10 have simply processed application submitted by other accused persons. Neither they have prepared any document nor used same for their benefit. Ingredients of alleged offences are absent against accused nos.5,9 and 10, who discharged their lawful obligation in tune with rules. Therefore, there is no substance in contention of the petitioner that dismissal of the complaint against those accused is erroneous. The learned J.M.F.C. so also learned Sessions Judge have rightly concluded that no case is made out against accused for issuance of process. Both the Courts have judiciously exercised jurisdiction vested with them. In that view of the matter, no case is made out for interference in writ jurisdiction of this Court. Writ petition sans merit. Hence, dismissed.

(S. G. CHAPALGAONKAR, J.)

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