

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

**38 CRIMINAL WRIT PETITION NO.1680 OF 2019
DILIP S/O. JANARDHAN HIWALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr.M.L. Kolhe, Advocate for the petitioner.

Mr.S.R. Yadav-Lonikar, APP for the respondent/State.

Mr.G.S. Shete h/f. Mr. S.G. Shete, Advocate for respondent Nos.2 to 5.

**CORAM : KISHORE C. SANT, J.
DATED : 11.04.2023**

PC :-

01. Heard learned Advocates for the parties at length.

02. The petitioner had filed application under section 156(3) of the Cr.P.C. bearing Cri.M.A. No.68 of 2015 in the Court of learned JMFC, Jafrabad. It is the allegation of the petitioner that respondent Nos.4 and 5 executed a sale-deed in favour of accused Nos.1 to 3 by taking disadvantage of the entries in the revenue record, which were taken by her husband in collusion with accused Nos.6 to 8. Accused Nos.6 to 8 happen to be revenue authority. It is a case of the petitioner that accused Nos. 4 and 5 have thus shown that they are in possession of area more than the area which was owned by them. The portion of land belonging to respondent Nos.4 and 5 was in-fact acquired by

the Government for construction of road and the Government raised rest house etc. Thus, they have committed offence under sections 464, 465, 466, 420, 467, 468, 471 read with 199 and 200 of the Indian Penal Code. The learned Magistrate was pleased to refuse the prayer under section 156(3) of the Cr.P.C. against accused Nos.6 to 8 on the ground that there was no sanction obtained under section 197 of the Cr.P.C.. The Magistrate also rejected the prayer under section 156(3) to the extent of accused Nos.1 to 5, however, directed the applicant to adduce evidence under section 200 of the Cr.P.C. The petitioner got himself examined under section 200 of the Cr.P.C. He also examined one more witness before the Magistrate. The learned Magistrate by order dated 12.03.2018 was pleased to issue process against accused Nos. 1 to 5 for the offences punishable under sections 420, 467, 468, 471 r/w 34 of the IPC. By same order, he dropped proceedings against accused Nos. 6 and 8 for want of sanction under section 197 of the Cr.P.C.

03. An order passed by the learned Magistrate came to be challenged by present petitioner by filing Criminal Revision Petition No.44 of 2018 in the Court of learned Additional Sessions Judge-1, Jalna. The learned Additional Sessions Judge-1, Jalna by its judgment and order dated 19.09.2019 was

pleased to set aside the order of issuing process against the petitioners therein by allowing the revision. The learned Sessions Judge while allowing criminal application observed that since the complainant has raised dispute about the right over the land in question, it was necessary for him to approach the Civil Court. It is observed that as a matter of fact, the petitioner had even approached the Civil Court by filing RCC No.93 of 2012 and availed civil remedy. Thus, it is observed that the dispute is totally of civil nature and no ingredients of any of the offences are made out.

04. Against the order passed by the learned Sessions Court, the petitioner has approached this Court. It is submission of the petitioner that once the Magistrate has recorded its satisfaction on the basis of evidence recorded under section 200 of the Cr.P.C., same could not have been set aside by the learned Sessions Judge. The learned Sessions Judge has thus exceeded its jurisdiction by setting aside the findings of fact recorded by the learned Magistrate. He submits that when the entries were taken, those entries itself are taken after preparing false documents and therefore this certainly attract ingredients of sections 467, 468, 471 and also 420 r/w 34 of the IPC. In support of the submissions, he relied upon judgment reported in 1976

Cri.L.J.1533 SC, in the case of Smt. Nagawwa Vs.Veeranna Shivlingappa Konjalgi & Ors. and more particularly para No.5 of the said judgment. The Hon'ble Apex Court in the said judgment has observed that the order of issuance of process by the Magistrate shall not be interfered lightly by the Sessions Court or the High Court while exercising jurisdiction under the revisional powers. Looking to the said judgment, it is seen that certain exceptions are given where such orders can be set aside. No.1 reads as below :-

“(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;”

05. He further relied upon judgment reported in 2008 ALL MR (Cri) 1538 in the case of Prakash Somnath Boob Vs. Jaiprakash Badrinarayan Rathi & Ors., wherein this Court has held that the jurisdiction available with the Court under criminal revision is limited. The Court has relied upon judgment in the case of C.P. Fernandes Vs. Union Territory of Goa, Daman & Diu reported in AIR 1977 SC 135, wherein it is held that the Court should not interfere with the Trial Court's view unless found to be unreasonable or perverse and if two views are possible on the basis of evidence, the higher

Court should not disturb the findings of the Trial Court.

06. The learned Advocate for the respondents vehemently opposed the petition. He submits that in this case it is totally a civil dispute between the parties. The allegations of the petitioner are totally civil in nature as those are in respect of revenue entries. From the reply he pointed out that as a matter of fact, the petitioner had filed a civil suit bearing RCS No.93 of 2012 in the Court of learned CJJD, Jafrabad praying for measurement of the land and to make boundary marks and pass suitable orders on the basis of the possession of the petitioner. However, later-on, said suit came to be withdrawn. He submits that in the complaint the allegations are in respect of the entries of the year 2009; whereas the complaint application is filed on 12.06.2015 i.e. after approaching the Civil Court. This clearly shows that even to the knowledge of the petitioner the dispute is of a civil in nature. He thus submits that the Sessions Court has rightly set aside the order of issuance of process by recording the findings that the dispute is a civil in nature.

07. Thus, on the basis of submissions of both the parties the judgments relied upon by the learned Advocate for the petitioner, this Court

has to see as to whether by reading of the complaint and evidence recorded by the learned Magistrate under section 200 of the Cr.P.C., a case is made out to issue process for the offence punishable under section 420, 467, 468, 471 read with section 34 of the Indian Penal Code.

08. In the complaint itself, the details of the land and their share are stated after the partition that took place between the family members. The details are given as to how the lands were acquired for various projects by the Government of the members of the family. It is allegation that the entries in the 7/12 extract were taken in 2009 by preparing bogus documents and the sale-deed was executed on 17.03.2009. In the complaint itself he has referred to the mutation entries which were taken in 2003. He has given details of the notices issued by the revenue authorities. Thus, it is clear that the entries were taken by the Revenue Authorities on the basis of some documents. There is nothing to indicate that as to which document was fabricated or what bogus document was furnished for taking entries. This Court, therefore, finds that there is no averment making out criminal case against the accused persons. There is no question of delivery of property and therefore even section 420 of the IPC is not attracted. Coming to the judgment in the case of **Smt.**

Nagawwa (Supra), it is seen that the Court can certainly set aside process issued by looking to the allegations made in the complaint and by looking as to whether case of commission of offence is made out. This Court, therefore, clearly is of the view that no case is made out making out any offence. So far as judgment in the case of Prakash Somnath Boob (Supra) is concerned, it is seen that in that case after full fledged trial, it was held that no offence was proved and the accused was acquitted by the Sessions Court. In that view this Court had held that revisional Court should not cause interference unless findings are found to be unreasonable or perverse. If two views are possible on the basis of evidence on record, the higher Court should not disturb the findings of the Trial Court. This Court finds that reading the FIR and the application as it is, it does not disclose any criminal offence. It discloses a dispute of civil nature. Another fact that needs to be considered is that even the petitioner himself had approached the Civil Court by filing RCS No.98 of 2012, which was withdrawn. That was in respect of same land. In view of the fact that this Court finds that there is no substance in the criminal writ petition. The criminal writ petition stands dismissed.

[KISHORE C. SANT, J.]