

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.284 OF 2022

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Prakash Hila Sonawane

..Petitioner

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Vaibhav D. Kadam a/w Sameer Parkar & Yash Fadtare, for the
Petitioner.

Mrs. S. D. Shinde, APP for the Respondent/State.

Mr. Vivek Salunke, for the Respondent No.2.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATE : 6th JULY, 2023

PC.

1. The Respondent No.2, a real elder brother of the petitioner, an agriculturist by profession, lodged a complaint alleging that 45 Are land was illegally and unauthorizedly got transferred from his share by the petitioner resulting into registration of FIR being Crime No.449 of 2021 with Satana Police Station for the offence punishable under Sections 420, 418, 465, 468, 471 r/w 34 of IPC.

2. Considering the nature of relationship between the parties, this Court referred the matter for mediation to the Principal District Judge, Nashik, however, the mediation has failed. As such, the proceedings are taken for final disposal at this stage.

3. The case of the prosecution against the petitioner is, land Gat No.1668 admeasuring 1 hectare 60 Are gone to the share

of respondent No.2/complainant. Vide unregistered relinquishment deed dated 20th May, 2002 which is in the form of an affidavit land to the extent of 45 Are was relinquished in favour of the petitioner. The aforesaid relinquishment deed subsequently was brought to the notice of the revenue authorities who have carried out appropriate mutation entry in favour of the petitioner. It is the case of the prosecution that the aforesaid relinquishment deed is illegal as it was got executed by practicing fraud thereby cheating the petitioner. As such, offence of cheating, forgery was registered, as it is claimed that the signature of the complainant was not genuinely obtained.

4. Contentions of counsel for the petitioner are, the knowledge of the respondent No.2/complainant about the relinquishment can be inferred from the relinquishment deed, which is in the form of an affidavit on stamp paper purchased under the signature of the respondent No.2/complainant. The same was duly signed by the complainant and executed in the office of Tahsildar. It is claimed that after the aforesaid relinquishment deed was executed, pursuant to the request made, revenue authorities have entered the name of petitioner thereby mutating his name on the 7/12 extract as a person from whose name the revenue can be collected as against the property to the extent of 45 Are. According to him, when the dispute arose with adjoining owners, jointly the petitioner and the respondent No.2/complainant had initiated proceedings for removal of encroachment under Section 138 of the

MLRC. According to him, the said proceedings were duly addressed by both jointly i.e. petitioner and respondent No.2/complainant under their respective signatures on 21st October, 2016. He would further urge that in the said proceedings before revenue authorities the relinquished share of the petitioner of 45 Are out of Gat No1668 was duly admitted by the respondent No.2/complainant. His further contentions are, the petitioner has initiated Regular Civil Suit No.34 of 2020 for declaration and injunction seeking relief that he is owner of the aforesaid property to the extent of 45 Are in which application for grant of temporary injunction Exh.5 moved under Order XXXIX Rule 1 and 2 of CPC came to be allowed on 18th November, 2022 by the Court of Civil Judge Junior Division, Satana. In addition, his contentions are, the respondent No.2/complainant has objected the revenue entry for the first time in 2022 by moving proceedings under Section 247 of the MLRC which was answered against the respondent No.2/complainant. As such, the claim that the fact about the land was transferred in the name of the petitioner in the year 2002 was well within knowledge of the respondent No.2/complainant. The respondent No.2/complainant without considering the fact that the petitioner has perfected his title by virtue of ownership, objected the same by way of after thought after a period of 20 years. According to him, since the issue is subjudice before the competent Civil Court, criminal proceedings are not maintainable.

5. While countering aforesaid submissions, counsel for the

respondent No.2/complainant would urge that the petitioner who is educated person by taking undue advantage of the respondent No.2/complainant has got executed the relinquishment deed. According to him, relinquishment deed is not registered one, so also, same is in the form of affidavit, revenue authorities ought not to have acted upon the same. He would urge that the delay in lodging FIR is because of the efforts made by the parties to amicably settle the matter and the promise made by the petitioner about the re-transfer of the land in the name of the respondent No.2/complainant. As such, he would urge that the present petition is liable to be rejected.

6. We have appreciated the submissions.

7. Perusal of the FIR and narrations therein in categorical terms discloses that the fact about the petitioner was in possession of the land to the extent of 45 Are from Gat No.1668 is not disputed or rather admitted by the respondent No.2/complainant. Though he is claiming that he is in possession of the suit property, however, the fact remains that in pending civil suit for declaration and injunction being Regular Civil Suit No.34 of 2020 temporary injunction is in operation against the respondent No.2/complainant. The Civil Court as such is seized of the issue as to entitlement of the petitioner in relation to the land to the extent of 45 Are out of land Gat No.1668.

8. The fact that the petitioner and the respondent No.2/complainant have jointly applied under Section 138 of the

MLRC for removal of encroachment, the action on the part of the respondent No.2/complainant of questioning the revenue entry under Section 247 of the MLRC sufficiently establishes the settled possession of the petitioner under the aforesaid relinquishment deed since 2002. The plea of adverse possession as is raised by the counsel for the respondent No.2/complainant at this stage has no substance, as the petitioner has perfected his title possession over the property under the relinquishment deed as neither the revenue entries nor any proceedings are initiated by the respondent No.2 in the form of civil proceedings for getting thereby upset alleged revenue entry.

9. As such, what can be noticed is, the issue which has complete civil colour has been sought to be a basis for registration of offence against the petitioner. That being so, in view of law laid down by the Apex Court in the matter of ***State of Haryana Vs. Ch. Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604***, a case for causing interference is made out. In this background, we deem it appropriate to quash and set aside FIR being Crime No.449 of 2021 registered with Satana Police Station for the offence punishable under Sections, 420, 418, 465, 468, 471 r/w 34 of IPC.

10. Needless to clarify that the observations made hereinabove are confined to the extent of quashing of FIR and same shall not influence on pending civil proceedings.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]