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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3564 OF 2018

Vikram Keru Pawar .. Petitioner

v/s.

Appasaheb Ramchandra Pawar And Ors. .. Respondents

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Mr. Kuldeep Patil, for the Petitioner.

Mr. Mahindra Deshmukh, for Respondent Nos. 1 to 3.

Mr. Arfan Sait, APP, for State.

....

CORAM: R.G. AVACHAT, J.

DATE : 23 JANUARY 2023.

P.C:-

The challenge in this writ petition is to the order of issuance of process for offences punishable under Section 420 and 166 read with 34 of Indian Penal Code.

2. Heard. The Petitioner is accused no.2 in a criminal case, RCC No.101 of 2012, instituted otherwise than on police report.

It is the case of Respondent Nos. 1 to 3 (original complainants) that land bearing Survey No.11/4, situated at Village

Vita, originally belonged to their father, late Ramchandra Balwant Pawar. Ramchandra died in 2001. The names of the complainants and other Class-I heirs of deceased Ramchandra remained to be recorded in the revenue record of land Survey No.11/4. One Hanumant Pawar (accused no.1), present Petitioner and the Revenue Officials got the name of the accused no.1 recorded in 7/12 extract in a capacity as Class-II heir of deceased Ramchandra Pawar. It was his claim that Ramchandra did not have Class-I heir. After recording his name in the 7/12 extract of the Land Survey no.11/4, the present Petitioner purchased the said land. In the sale deed, the consideration amount is shown as Rs.3 lakhs, paid in cash. It is also the case of the Respondents/complainants that the present Petitioner and accused no.1 are real estate agents. Both of them conspired together to have the name of accused no.1 recorded in the revenue record and then get the land transferred to the name of the present Petitioner.

3. Based on the aforesaid averments in the complaint, learned Magistrate issued process for offences punishable under Sections 167, 177, 420, 466 read with 34 of Indian Penal Code. Both, present Petitioner and original accused No.1, preferred revision application against order of issuance of process. The revision application was allowed by Additional Sessions Judge, Sangli, setting aside the order of issuance of process under Section 177 of IPC. Rest of the order of issuance of process was maintained. The Petitioner is,

therefore, before this Court in this writ petition.

4. Learned Advocate for the Petitioner would submit that the Petitioner was, in fact, a victim of the alleged crime. The Petitioner purchased the land for valuable consideration of Rs.3 lakhs. Learned Advocate took this Court to Section 464 of the IPC to submit that no offence of forgery could be said to have been made out. He, therefore, urged for allowing the writ petition by setting aside the entire order of issuance of process.

5. Learned Advocate for the Respondents /complainants would, on the other hand, submits that averments in the complaint, prima facie, make out offence against the present Petitioner. The Petitioner and the Respondents/complainants reside at one and the same village. The Petitioner deals in real estate. He knew the land to have belonged to deceased Ramchandra Pawar and the Respondents to be his Class-I heirs. Only with a view to grab the land, the Petitioner conspired with original accused no.1. The sale deed indicates the Petitioner to have paid consideration amount in cash. The same is an eye-wash. Had really the Petitioner been innocent, he would have paid the amount either by cheque or draft. According to learned Advocate, since averments in the complaint make out prima facie case against the Petitioner, the order of issuance of process is not liable to be interfered with.

6. Considered the submissions advanced. Perused the averments in the complaint and the documents relied on. This Court do not propose to observe as to whether the offence of forgery is made out against the Petitioner herein. The case of the Respondents/complainants is that the land Survey No.11/4, situated at village Vita, belonged to their father Ramchandra Pawar. This fact is not disputed. Admittedly, the mutation entry was effected in the revenue record suggesting Ramchandra Pawar was survived by his nephew, accused no.1, alone. His name was, therefore, recorded in the revenue record as successor-in-interest of late Ramchandra Pawar. He then sold the said land to the Petitioner herein. In the sale deed, the consideration amount is said to have been paid in cash. It is also not disputed that the Petitioner and the Respondents/complainants are from one and the same village. It has, therefore, to be assumed that the present Petitioner knew the Respondents/ complainants to be Class-I heirs of deceased Ramchandra Pawar. Still he goes ahead and relying on 7/12 extract, recording the name of the original accused no.1 therein and purchased the land from him, ostensibly for a consideration shown to have been paid in cash.

7. As such, the averments in the complaint and the facts and circumstances of the case, prima facie, indicate the Petitioner to have been privy to the offence allegedly committed by the original accused no.1. The Petitioner appears to have been a conspirator in commission

of the alleged offence. As such, no case for setting aside the order of issuance of process is made out. Needless to mention the trial court may frame the charge for appropriate offence, if any, that may be made out on recording of evidence of complainants/Respondents in view of Section 245 of the Code of Criminal Procedure.

8. Petition stands dismissed.

(R.G. AVACHAT, J.)