

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] NOS. 1002 & 736 OF 2021.

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CRIMINAL APPLICATION [APL] NO. 1002 OF 2021.

Shri Ravindra s/o Pandurang
Meshram, Aged about 55 years,
Occupation – Business,
resident of Plot No.251, Vishram
Nagar, Nari, Ring Road,
Nagpur.

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APPLICANT.

VERSUS

1.State of Maharashtra,
Through Police Station Officer,
Police Station Rana Pratap Nagar,
Nagpur.

2.Shri Chindhu @ Chandu s/o
Kawduji Meshram,
Aged about 79 years,
Occupation – Retired,
resident of Kashish Ata Chakki,
Near Varsha Baudha Vihar,
Gopal Nagar, Rana Pratap Nagar,
Nagpur.

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NON-APPLICANTS.

Mr. R. Joshi, Advocate for the Applicant.
Ms. M. Deshmukh, A.P.P. for Non-applicant No.1 /State.
Ms. S. Dhotre, Advocate for Non-applicant No.2.

WITH

CRIMINAL APPLICATION [APL] NO. 736 OF 2021.

Shri Minal s/o Narhari Kawale
Aged about 51 years,
Occupation – Business,
resident of 51, Gudhade Layout,
Deendayal Nagar,
Nagpur.

... **APPLICANT.**

VERSUS

1.State of Maharashtra,
Through Police Station Officer,
Police Station Rana Pratap Nagar,
Nagpur.

2.Shri Chindhu @ Chandu s/o
Kawduji Meshram,
Aged about 79 years,
Occupation – Retired,
resident of Kashish Ata Chakki,
Near Varsha Baudha Vihar,
Gopal Nagar, Rana Pratap Nagar,
Nagpur.

... **NON-APPLICANTS.**

Mr. A.A. Naik, Advocate for the Applicant.
Ms. M. Deshmukh, A.P.P. for Non-applicant No.1 /State.
Ms. S. Dhotre, Advocate for Non-applicant No.2.

**CORAM : VINAY JOSHI AND
VALMIKI SA MENENZES, JJ.**

DATE : FEBRUARY 16, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Considering the controversy involved in the matter and since both applicants arise out of Crime No.79/2021 registered with Rana Pratap Nagar Police Station, Nagpur for the offence punishable under Sections 406, 420, 465, 467, 471 read with Section 34 of the Indian Penal Code, by consent of the learned Counsel appearing for the respective parties, they are taken up for final disposal at the stage of admission.

Admit.

2. Applicant – Ravindra (Criminal Application No.1002 of 2021), has been arrayed as accused no.2, while applicant – Minal

(Criminal Application No.736/2021), has been arrayed as accused no.3 in the first information report. Both of them have challenged the contents of first information report by stating that it no where constitute an offence as alleged. It is submitted that it was purely a civil dispute for which revenue proceedings are going on. Though allegations of fabrication of Will has been leveled, however, since the year 2011 the informant was well aware and after lapse of 10 years, report has been lodged.

3. It is canvassed that the informant belongs to a branch of one Domdya, who has no concern with the property of the testator namely Damdu, thus, there is no element of deception or fraud. The first information report has been lodged by one Chindhu @ Chandu Meshram. It is the prosecution case that one Mirgu was assigned 7 acres of land way back prior to 100 years. Mirgu was having two sons namely Domdya and Mahadya. Domdya has been survived by Sawjya, Kawdu and Chindya [informant]. As against this, branch of Mahadya was succeeded by Damdu and then 3 sons of Damgdu, namely Balkrishna, Khushal and Baburao. It is informants case that

after demise of the original owner Mirgu, there was partial partition in between Domdya and Mahadya to the extent of land bearing Kh. Nos.83 and 87. He alleges that in the year 1999 co-accused Baburao [accused no.1], has fraudulently got mutated entire land of Mirgu in the name of his grand-father Mahadya, and in the name of his father Damdu. It is alleged that by keeping the entire branch of Domdya away, mutation entries have been managed by the accused no.1 Baburao.

4. It is informants' case that Damdu died in the year 1994, however, accused no.1 Baburao in collusion with accused no.2 Ravindra [applicant in Criminal Application No.1002/2021] prepared a false and fabricated document of Will of Damdu showing that the former has bequeathed a piece of land measuring 2036 sq. mtrs. bearing CTS No.43/1, in favour of Ravindra. The informant states that they have filed revenue appeals and still the proceedings are pending.

5. It is alleged that on the basis of forged Will deed, the

applicant Ravindra got mutated his name to said properly. Then Ravindra in collusion with the applicant Minal sold the said property to him in the year 2015, and thus, an offence of cheating, forgery, fraud in collusion with each other.

6. The learned counsel appearing for the informant would submit that during pendency of revenue appeals, Ravindra has sold CTS No.43/1 to Minal. According to her Ravindra has no title as the Will was forged and fabricated one. Moreover, it is submitted that since the entire branch of Domdya has been kept away, the offence of cheating has been made out. The learned A.P.P. has submitted that the first information report constitutes an offence and matter needs to be investigated.

7. By and large, we find that it was an ancestral land of Mirgu. Even if informants' case is taken as it is, in the year 1999 mutation entries have been carried in the name of only one of the son of Mirgu. Already revenue proceeding raising challenge to the said mutation is pending from the year 2012 onwards. It is not

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satisfactorily stated as to how wrong mutation entry can assume a character of criminal offence. Already the validity of the mutation entry is subjudice. It reveals that on the strength of testamentary document of Will, Mutation Entry (ME) No.1128 was effected long back on 04.12.1999. It could be seen from the revenue appeal filed by the informant that he got the knowledge of said mutation entry way back in the year 2011. Concededly the Will was challenged at the time of filing of the first information report in the year 2021. It is pointed out that the said suit was filed on 08.11.2021 bearing Special Civil Suit No.977/2021 i.e. after filing of the existing first information report.

8. The particular grievance of the informant is about alleged wrong mutation entries for which revenue proceedings is going on. So far as the aspect of Will is concerned, its genuineness would be decided by the competent Civil Court. Though the allegation of fabrication may attract criminal element, however, for 10 years from the knowledge, no grievance was ventilated against the Will.

9. As regards the applicant Minal is concerned, it is alleged that he has purchased the property in the year 2015 from the legatee of Ravindra during the pendency of the revenue appeal. There appears to be no legal impediment for the legatee to sell the property during the pendency of the revenue proceedings unless there is specific order to that regard. By any stretch of imagination knowledge of Minal cannot be attributed to the legality of Will of the year 1993 of which mutation entry was taken long back in the year 1999. The applicant Minal came into picture first time in the year 2015, therefore, no prima facie criminal liability would attract.

10. In view of above we find that the matter is largely of civil nature for which the parties are pursuing their claim before the Revenue Court. The first information report, even if taken on its face value, does not discloses any criminal offence. Continuation of such prosecution would be an abuse of the process of law. In view of that, both Criminal Applications are allowed and disposed of.

11. The first information report bearing Crime No.79/2021

registered with Rana Pratap Nagar Police Station, Nagpur for the offence punishable under Sections 406, 420, 465, 467, 471 read with Section 34 of the Indian Penal Code, is hereby quashed and set aside, as regards to the applicants herein.

12. It is relevant to mention here that the above observations are restricted to the extent of case of the present applicants only.

JUDGE

JUDGE