

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

CRIMINAL WRIT PETITION NO. 722 OF 2022

PETITIONER : Sau. Prabha Ramesh Lande, Age about 46 Yrs., Occ. Housewife, R/o. Tamshi, Tq. Balapur & Distt. Akola.

//VERSUS//

RESPONDENTS : 1. Jagannath Mahadev Kale, Age about 58 Yrs., Occ. Chairmen, Madhi Sansthan, Tamshi, Tq. Balapur, Distt. Akola.

2. Rambhau Raybhan Kale, Age about 5 Yrs., Occ. Chairmen, Madhi Sansthan, Tamshi, Tq. Balapur, Distt. Akola.

3. State of Maharashtra, through Police Station Officer, Police Station Balapur, Tq. Balapur, Dist. Akola.

Mr. O.Y. Kashid, Advocate for the Petitioner.
Mr. S.S. Sohoni, Advocate for Respondent Nos.1 & 2.
Ms. M.H. Deshmukh, APP for Respondent No.3/State.

CORAM : G. A. SANAP, J.
DATED : 6th MARCH, 2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally by consent of the learned advocates for the parties.

02] In this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner-original complainant has challenged the order dated 18th July, 2022, passed by the learned Additional Sessions Judge, Akola, whereby the learned Additional Sessions Judge was pleased to dismiss the revision filed by the petitioner-complainant, challenging the order dated 7th October, 2020, passed by the learned Judicial Magistrate First Class, Balapur. The learned Judicial Magistrate First Class, Balapur by his order dated 7th October, 2020 had dismissed the complaint filed by the petitioner-complainant against the accused Nos. 1 to 3 for commission of offences under Sections 420, 464, 465, 468 read with Section 34 of the Indian Penal Code, 1860 (IPC).

03] The facts leading to the filing of the petition can be summarized as follows:

In this judgment, the parties are referred by their nomenclature in the complaint. It is the case of the complainant that the deceased father-in-law Ramrao Namdeo Lande and his brother Shankar Tukaram Kale were the recorded owners of Survey No.3, Gat No.6, Area 2H, 65R, situated at village Tamshi, Tq. Balapur, Dist. Akola. This land was allowed to them by the

Tenancy Tahsildar in Tenancy Case No.80/59(13) of 1963-64 by order dated 27th December, 1971. It is stated that the father-in-law of the complainant was a tenant of the said land since prior to 1958. On account of the financial crisis in the family, the husband of the complainant had gone to Gujarat for doing labour work. It is alleged that the accused Nos.1 to 3 took the advantage of this situation and behind the back of father-in-law, got the said land transferred to the name of accused No.3. It is stated that a case was filed before the Tenancy Tahsildar, Balapur in the year 1980-81. In the said case, Shankar Tukaram Kale and Ramrao Namdeo Lande- the father-in-law of the complainant were shown as dead. It is stated that Ramrao Lande died in the year 2004. It is stated that by playing fraud and by creating fabricated documents, the land was mutated in the name of accused No.3-deceased Anusaya. The enquiry made by the complainant revealed that from the name of accused No.3, the land was mutated in the name of Madan Vitthalrao Deshmukh. Madan Vitthalrao Deshmukh transferred it to the Trust of which the accused No.1 is the President. It is stated that the accused persons, therefore, committed an offence of cheating, criminal breach of trust and fabrication of false document.

04] The learned Magistrate before passing the final order, directed the police to conduct the enquiry/investigation. The police conducted the investigation and filed the report. The complainant was granted an opportunity by the learned Magistrate to file her say to the said report. After granting an opportunity of hearing to the complainant and on going through the record, the learned Magistrate found that no offence was made out against the accused Nos.1 and 2. The learned Magistrate found that there was no point in proceeding with the complaint against the accused No.3, inasmuch as the accused No.3 died in the year 1999. The learned Magistrate, therefore, dismissed the complaint *vide* order dated 7th October, 2020.

05] The complainant, being aggrieved by this order of dismissal of the complaint, preferred a revision application in the Sessions Court at Akola. The learned Additional Sessions Judge, Akola by his order dated 18th July, 2022 recorded his agreement with the findings of the learned Magistrate and dismissed the revision application. The complainant has approached this Court against this order.

06] I have heard the learned advocate for the complainant and the learned advocate for the accused Nos.1 and 2. Perused the

record and proceedings.

07] The learned advocate for the complainant submitted that the facts stated in the complaint *prima facie* disclosed the commission of the offences, mentioned in the complaint, by the accused persons. The learned advocate pointed out that certain observations made by both the Courts below are touching the merits of the matter. The learned advocate submitted that at the preliminary stage, the Courts below were not expected to make a roving enquiry and record a finding of fact on merits. The learned advocate further submitted that when the mutation entry was made on the application of Anusaya-accused No.3 in the year 1981, the father-in-law of the complainant was alive. It is submitted that in order to grab the land, a false statement was made before the Revenue Authority that her father-in-law died long back. The learned advocate submitted that this fact itself is sufficient to prosecute the accused Nos.1 and 2. The learned advocate, relying upon a decision in the case of ***Rajiv Gandhi Ekta Samiti Vs. Union of India and Another [(2000) Cri.LJ 2002]***, submitted that when the accused is dead, the only thing the Officer In-charge can do is to indicate in the report that the accused is dead and that he is not sent up for trial. Relying upon this decision, it is

submitted that the learned Magistrate could have proceeded against the deceased accused No.3-Anusaya, though she died in the year 1999.

08] The learned advocate for the accused Nos.1 and 2 submitted that the Courts below have *prima facie* recorded an observation that at the relevant time, the accused Nos.1 and 2 were not in any manner concerned and as such involved in the said transaction. The learned advocate submitted that the accused No.1 is the president of the Trust and the accused No.2 is the vice-president of the said Trust, to which the land has been gifted by Madan Vitthalrao Deshmukh. The learned advocate submitted that Madan Vitthalrao Deshmukh is not an accused in this case. The learned advocate, therefore, submitted that concurrent finding of fact recorded by the Courts below is supported by the record and, therefore, does not warrant interference.

09] In order to appreciate the submissions advanced by the learned advocates for the parties, I have gone through the available record and proceeding. It is to be noted that the criminal prosecution is a serious matter. In order to make a person to face the criminal prosecution and as such the ordeal of long-drawn criminal battle, it cannot be for asking and in a routine manner. In

order to take cognizance of offence, the material on record must be sufficient to make out the basic ingredients of the offences alleged to have been committed by the accused persons. Unless and until the *prima facie* ingredients are made out on the basis of the allegations made in the complaint, the cognizance of the offences alleged to have been committed simply by quoting sections of the IPC cannot be taken. In this case, certain facts, which have bearing with the dispute, need to be stated at the outset. The Tenancy Tahsildar by his order in Tenancy Case No.46(1)/5/80-81 recognized the right of deceased Anusaya as owner of the land. It is seen that the sale certificate was issued in her name on 23rd November, 1983. The enquiry conducted by the police further revealed that on 31st December, 1984, Anusaya gifted the said land to Vitthalrao Deshmukh. Vitthalrao Deshmukh died on 17th August, 1986. Therefore after his death, his wife Lilabai Vitthalrao Deshmukh and his son Madan Vitthalrao Deshmukh inherited the said land. Necessary entry was made in the revenue record. The enquiry further revealed that Lilabai Vitthalrao Deshmukh relinquished her right in respect of the said land in favour of her son Madan Vitthalrao Deshmukh by relinquishment deed dated 15th June, 1988. It further revealed that Madan Vitthalrao Deshmukh gifted the said land to Hanuman Temple Trust at

Tamshi by a Gift Deed dated 15th June, 1988. All these facts have been borne out on the basis of the mutation record, verified by the Investigating Officer during the course of investigation.

10] It is true that the father-in-law of the complainant died in the year 2004. On the basis of this fact, it has been established that in the year 1980-81, the father-in-law of the complainant was not dead, as sought to be made out on the basis of the mutation entry, on the basis of which, the land was transferred in the name of deceased Anusaya. The learned advocate for the accused submitted that the complaint is *mala fide*, because after exhausting all the remedies under the law by the heirs of Ramrao Namdeo Lande, this complaint came to be filed by the complainant in the year 2018, as a last resort. The learned advocate in order to substantiate this submission, took me through the record and particularly the observations made by the learned Additional Sessions Judge in his order. The relevant observations have been made in paragraph 9. It is seen that the husband of the complainant Ramesh and others namely Vishnu, Gajanan Ramrao Lande and Rukmini Thakare had filed an application for condonation of delay caused in filing an appeal against the order passed by the Tenancy Tahsildar on 13th April, 1981, whereby the

land came to be mutated in the name of Anusaya. The said application was dismissed on 29th November, 2014. The revision was filed against this order before the Maharashtra Land Revenue Tribunal, Nagpur. The said revision was dismissed on 16th November, 2015. It is further seen that the above persons have filed the proceeding before the Deputy Charity Commissioner, Akola for conducting the enquiry in this matter. The said proceeding was dismissed on 24th June, 2016. The appeal filed against this order was dismissed by the Joint Charity Commissioner, Amravati by his order dated 5th October, 2017. It is to be noted that mention of the above facts was necessary to assess the intention and *bona fides* of the complainant. The chronology of the dates and events set out above would show that after exhausting the remedies under the law by other heirs concerned with the land, the complainant filed this complaint in the year 2018. It, therefore, goes without saying that after having tested unsuccess in the revenue proceeding, this complaint was filed as a last resort to make the accused persons to face the ordeal of criminal prosecution.

11] On perusal of the complaint, it is seen that the allegations against the accused Nos.1 and 2 are vague and general. At the most, on the basis of the admitted fact, it can be seen that

they came into picture in the year 1988 when Madan Vitthalrao Deshmukh executed the Gift Deed of the said land in favour of the Trust. It is not the case of the complainant that the accused Nos.1 and 2, one way or the other, were concerned with the land in question and involved in the initiation of the tenancy proceeding before the Tenancy Tahsildar in the year 1980-81. Perusal of the complaint would show that it is conspicuously silent about this important aspect. It is not stated in the complaint that the false documents were created for the purpose of wrongful gain to the accused Nos.1 and 2 and for causing wrongful loss to the complainant. In my view, on the basis of the available record, it is not possible to accept the submissions advanced on behalf of the complainant. The learned Magistrate before passing an order of dismissal of the complaint, had ordered the investigation. The report of the investigation was provided to the complainant. The complainant filed reply to the said report. The learned Magistrate, as can be seen from the order, granted sufficient opportunity to the complainant to deal with the said report. After granting an opportunity of hearing, the learned Magistrate found that no case was made out for taking cognizance against the accused Nos.1 and 2. The learned Magistrate also found that the complaint in question was not maintainable against the accused No.3, who died

in the year 1999. It is to be noted that Madan Vitthalrao Deshmukh, who gifted the said land to Hanuman Temple Trust in the year 1988, was not made an accused. The transaction of the accused Nos.1 and 2 on behalf of the Hanuman Temple Trust was with Madan Vitthalrao Deshmukh and that too in the year 1988.

12] In the facts and circumstances, it was necessary on the part of the complainant to justify the filing of the complaint against the accused Nos.1 and 2. No specific role has been attributed to them. On the basis of the bald statement, the accused Nos.1 and 2 cannot be made to face criminal prosecution. Perusal of the complaint would show that the allegations are vague and general. The facts stated in the complaint are not sufficient to make out the basic ingredients of the offences alleged to have been committed by the accused. The Courts below have taken all these facts into consideration. On going through the record, I concur with the view taken by the learned Additional Sessions Judge, Akola. There is no substance in the petition. The petition is, therefore, **dismissed**. Rule stands discharged.

(G. A. SANAP, J.)