



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.139 OF 2022

1. Ashok s/o Tulshiram Shejul,
age 48 yrs, occ. Agri,
R/o Samta Colony, Majalgaon.
2. Santosh s/o Kachrural Duggad,
age 53 yrs, Occ. Agri.
R/o Majalgaon, Tq. Majalgaon,
District Beed.
3. Vasudev s/o Pandurang Nagargoje,
age 53 yrs, Occ. Agri,
R/o Govindwadi, Tq. Majalgaon,
Dist. Beed.
4. Bibhishan s/o Baburao Magar,
age 43 yrs, Occ. Agri,
R/o Majalgaon, Tq. Majalgaon,
District Beed.

Applicants.

Versus

1. The State of Maharashtra,
through Police Inspector
Police Station, Majalgaon City,
Tq. Majalgaon, Dist. Beed.
2. Bapurao Laxmanrao Gawali,
age 80 yrs, Occ. Agri,
R/o Datta Colony, Majalgaon,
District Beed.

Respondents.

...
Advocate for Applicants : Mr. S.S. Thombre
APP for Respondents : Mr. A R Kale
Advocate for Respondent no.2 : Mr A A Munde
...

**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

Dated : 01st October, 2024.

ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The applicants (accused nos.3,2,4 and 5) have approached this Court under section 482 of the Criminal Procedure Code with a prayer to quash and set aside the proceeding in RCC No. 3 of 2021, pending before the learned Judicial Magistrate First Class, at Majalgaon.

2. Respondent No.2 had filed Cri.M.A. No.562 of 2018 before the JMFC, at Majalgaon with prayer to issue directions under section 156 (3) of the Cr.P.C. for registration of the offence against the accused persons named therein for the offence punishable under sections 420, 465, 467, 468, 471, 120(b) r/w 34 of the Indian Penal Code.

3. In nutshell, it was contention of the respondent no.2 that he owns land in gat no.11, admeasuring 2H 83 R which is purchased by him under registered sale-deed executed by original owner i.e. Dhondabai Raut. Accused no.1 Janardhan Garje is unconcern with the land, however, he indulged in obstructing possession of respondent no.2. Consequently, respondent no.2 approached Civil Court vide RCS No.32 of 2004 for relief of perpetual injunction against accused no.1. The suit was contested by accused no.1. finally, it has been decreed against him. The appeal no.59 of 2014 filed by accused no.1 before the District Judge is also dismissed. Decree has attained finality.

4. It is further alleged that accused no.1, in collusion with surveyors made application to the Deputy Superintendent of Land Records, at Majalgaon for measurement of the land, which is in ownership and possession of respondent no.2. In pursuance to such application, notices were issued. False Record regarding service of such notices was prepared. Even, dead person namely Narayan Sakharam Choudhary is shown to have received the notice. In pursuance of measurement notices, false panchnama and measurement report is prepared by surveyors. It was submitted to Tahsil Office by accused No. 1 in his application for NA permission. In inquiry by Tahsildar it is revealed that measurement report has been falsely prepared. As such, accused persons created false record with intention to cheat respondent no.2. Respondent no.2 made police complaint as regards to offences committed by accused persons, however, no cognizance was taken. Hence, he filed application invoking section 156 (3) of the Criminal Procedure Code.

5. The learned Magistrate, after considering averments of the Misc. Cri. Application and documents tendered before him, partly allowed the application vide order dated 10.12.2018 and issued directions under section 156 (3) of Cr.P.C. against accused nos.1 to 5, however, declined to issue any directions against accused nos.6 and 7.

6. In pursuance of the aforesaid order crime no.371 of 2018 came to be registered with police station Majalgaon City. Investigation progressed. Finally, charge-sheet came to

be filed against in all 7 accused persons including the applicants herein for the offences punishable under sections 420, 465, 467, 468, 471, 120 (b) r/w 34 of the IPC.

7. Mr. Thombre, learned advocate appearing for the applicants would submit that limited allegations against applicants is that they have acted as panchas in the panchnama of measurement that was prepared by the accused nos.6 and 7 in collusion with accused no.1. However, learned Magistrate has not issued any directions for investigation against respondent nos.6 and 7, who were public servants. Admittedly, the applicants are unconcern with the civil dispute between the accused no.1 and respondent no.2. If the learned Magistrate declined to issue directions for registration of the offence against accused nos.6 and 7, applicants who acted as the Panch as per directions of the public servants, they could not have been made accused or no offence can be made out independently against them in absence of accused nos.6 and 7. Mr. Thombre would submit that ironically, ignoring specific directions of the Magistrate, police station officer has registered the offence even against accused nos.6 and 7 and carried out investigation leading to filing of the charge-sheet. Mr. Thombre, would submit that even taking contents of the FIR on its face value, no case can be made out against the applicants for any charged offence.

8. Per contra, Mr. A.R. Kale, learned APP and Mr. A.A. Munde, learned advocate appearing for respondent no.2 vehemently opposed prayers in the application contending that stipulations in the FIR and material collected during

investigation is sufficient to bring home complicity of the applicants in commission of the offence. Triable case is made out against them. It is further submitted that because some of accused persons are absconding, trial has been prolonged. At this stage, there is no occasion to entertain the application for quashment of the proceeding.

9. Today, we have decided criminal application No.460 of 2021 filed on behalf of accused nos.6 and 7 and quashed the FIR and criminal proceeding against them for the detailed reasons recorded in the judgment.

10. In light of quashing of the proceeding against accused nos.6 and 7, the applicants who alleged to have acted as Panchas in the measurement work carried by respondent nos.6 and 7 cannot be independently prosecuted for any of the offences. Pertinently, contents of FIR or charge-sheet is bereft to bring complicity of the applicants in commission of offence independent of the accused nos.6 and 7.

11. In that view of the matter, we are of the considered view that there is no propriety in continuing the criminal proceeding against the applicants. Resultantly, we proceed to pass the following order.

O R D E R

- i. Criminal Application is **allowed**.
- ii. The proceeding bearing RCC No.3 of 2021 pending before the learned Judicial Magistrate First Class, at Majalgaon for the offence

punishable under sections 420, 465, 468, 471, 120-B, r/w 34 of the IPC is hereby quashed and set aside to the extent of applicants herein i.e. (accused nos. 3, 2, 4 and 5) only.

iii. Criminal application stands **disposed off**.

(S. G. CHAPALGAONKAR)
Judge

(SMT. VIBHA KANKANWADI)
Judge

...

aaa (f).