



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.460 OF 2021

1. Shriramchandra Ramdas Kunwar,
age 52 years, Occ. Service,
Working as Deputy Superintendent
Land Records, presently working at Wadwani.
2. Asadkhan Bibankhan Pathan,
age 49 years, Occ. Service as surveyor,
in the office of Land Records, Majalgaon,
at present Georai. Applicants.

Versus

1. The State of Maharashtra,
through it's Secretary,
Home Department,
Mantralaya, Mumbai 400 032.
2. District Superintendent of Police,
Beed, District Beed.
3. Bapusaheb Shantaram Mahajan, age 45 yrs,
Police Inspector, Majalgaon City Police Station.
4. Smt. Neeta Gaikwad,
age 40 yrs, Occ. Assistant Police inspector,
Majalgaon City Police Station,
District Beed.
5. Bapurao Laxmanrao Gawali,
age 80 years, Occ. Agri,
R/o Datta Colony, Majalgaon,
District Beed.
6. Deputy Superintendent of Police Officer,
at Majalgaon, Tq. Majalgaon,
District Beed. Respondents.

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Advocate for Applicants : Mr. S.S. Thombre
APP for Respondent nos.1, 2 & 6 : Mr. A R Kale
Advocate for Respondent no.5 : Mr. A. A. Munde.
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**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

Dated : 01st October, 2024.
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JUDGMENT :- (Per S. G. Chapalgaonkar, J.)

1. The applicants (accused nos.6 and 7) have approached this Court under section 482 of the Criminal Procedure Code with a prayer to quash and set aside the proceeding in R.C.C. No.3 of 2021 pending before the learned Judicial Magistrate First Class, at Majalgaon and also seeks further directions against respondent nos.1 to 4 to pay the compensation of Rs.10 Lakh to the applicants.

2. Respondent No.5 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 offence against accused persons named therein for offences 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.5 that he owns land gat no.11 admeasuring 2H 83 R as per sale-deed executed by the original owner Dhondabai Raut. Accused no.1 Janardhan Garje is unconcerned with the land, however, he indulged in obstructing possession of respondent

no.5. Consequently, respondent no.5 approached Civil Court vide RCS No.32 of 2004 claiming relief of perpetual injunction against accused no.1. The suit was contested by accused no.1. Finally, it has been decreed against accused no.1. 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 the ownership of respondent no.5. On the basis of 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 the surveyor and submitted to Tahsil Office for grant of N.A. permission. Learned Tahsildar made inquiry and found that measurement report has been falsely prepared. As such, accused persons created false record with intention to cheat respondent no.5. Respondent no.5 made 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.PC. only against accused nos.1 to 5, however, declined to issue any directions against accused nos. 6 and 7 i.e. present applicants.

6. In pursuance of the aforesaid directions, 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 submits that applicants are the Government servants. Applicant no.1 was Deputy Superintendent of Land Records, whereas applicant no.2 was surveyor in the office of the Land Records at Majalgaon. They have discharged their duties in pursuance of the application submitted by accused no.1 Janardhan Garje seeking measurement of the land admeasuring 2H 83R in gat no.11. They are unconcern with the internal dispute between respondent no.5 and accused no.1-Janardhan Garje. However, false imputations were made against them in the Misc. Application No.562 of 2018 by respondent no.5 regarding preparation of false record. However, the learned Magistrate, after considering material tendered into service issued directions under section 156 (3) of Cr.PC. to file report of investigation only to the extent of accused nos.1 to 5 and declined to pass any such order against applicants-public servants. Ironically, police officers registered the FIR against all seven persons named as accused in Misc. Application No.562 of 2018 and proceeded further to cause

investigation leading to filing of final report. According to Mr. Thombre, respondents/police station officer exceeded jurisdiction while including names of applicants as accused in the FIR and carry investigation in furtherance of such implication. Mr. Thombre would further submit that the applicants being public servants and allegations against them are pertaining to acts done during the course of their official duty; in absence of sanction by competent authority under section 197 of the Cr.PC. the Court cannot take cognizance and proceed further to conduct the trial. He would further submit that deliberate and intentional act on the part of the police officers thereby incorporating name of the applicants in the array of the FIR, contrary to the directions given by the learned Magistrate has caused mental torture and harassment to the applicants. Hence, respondent nos.1 to 4 are liable to compensate the applicants.

8. Per contra, Mr. A.R. Kale, learned APP and Mr. A.B. Munde, learned advocate appearing for respondent no.5 vehemently opposed prayers in the application contending that stipulations in the FIR and further investigation is sufficient to bring home complicity of the applicants in relation commission of the offence. A triable case is made out against them. It is further submitted that because some 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. We have considered the submissions advanced on behalf of the learned advocates appearing for respective parties. We have gone through contents of the Cri.M.A. No.562 of 2018, order dated 10.12.2018 passed by the J.M.F.C., Majalgaon, contents of the FIR in crime no.371 of 2018 registered with police station Majalgaon and charge-sheet in RCC No.3 of 2021 filed on conclusion of the investigation.

10. It is apparent that inception of the proceeding is from Cri.M.A. no.562 of 2018 filed by respondent no.5 invoking powers of the Magistrate under section 156 (3) of Cr.P.C. Respondent No.5 made prayer for issuance of directions under section 156 (3) of Cr.P.C. against in all 7 accused persons with stipulation that accused no.1 Janardhan Garje, who is unconcern with the land owned by him, made an application depicting himself to be the owner of the land and caused measurement through the Land Record Authorities. Further, prepared a measurement map and report that was placed before Tahsildar in his application for grant of NA permission. The learned Magistrate, on consideration of the stipulations in the application made by respondent no.5 found that there is sufficient material to make out cognizable case against accused nos.1 to 5 named in the application, however, observed that from act of accused no.1, it cannot be said that accused nos.6 and 7 made collusion with him. It is further observed that report of the Tahsildar reflects false action of accused no.1 and not accused nos.6 and 7. Accused nos.6 and 7 were duty bound to measure the land on getting the application. Therefore, prima facie involvement of accused nos. 6 and 7 is

not discernible so as to call report of investigation under section 156 (3) of Cr.P.C.. With these observations, the learned Magistrate declined to pass any order as regards to accused nos.6 and 7 and restricted directions under section 156 (3) of Cr.P.C. to the extent of accused nos.1 to 5.

11. In pursuance of the directions of the learned Magistrate under order dated 10.12.2018, it was expected that police station officer would register the FIR only against accused nos.1 to 5. However, FIR shows that accused nos.6 and 7 (present applicants) were also added in the column of accused and on completion of the investigation, they are also charge-sheeted. We are of the considered view that such an action on the part of the police station officer was ultra-vires. Consequently, registration of the FIR and eventual investigation leading to filing of the charge-sheet to the extent of applicant nos.1 and 2 is illegal.

12. One more important facet of the matter, which needs to be highlighted, is that, respondent no.5 had approached the learned Magistrate under section 156 (3) of Cr.P.C. seeking directions for the investigation. Section 156 (3) of Cr.P.C. reads as under :-

156. Police Officer's power to investigate cognizable case :-

- (1)
- (2)
- (3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

State Amendments

(Goa)-

[Maharashtra] -

In it's application to the State of Maharashtra, in section 156, after sub-section (3), add the following provisos, namely :—

“Provided that, no Magistrate shall order an investigation under this section against a person who is or was a public servant as defined under any other law for the time being in force, in respect of the act done by such public servant while acting or purporting to act in the discharge of his official duties, except with the previous sanction under section 197 of the Code of Criminal Procedure, 1973 (2 of 1974) or under any law for the time being in force :

Provided further that, the sanctioning authority shall take a decision within a period of ninety days from the date of the receipt of the proposal for sanction and in case the sanctioning authority fails to take the decision within the said stipulated period of ninety days, the sanction shall be deemed to have been accorded by the sanctioning authority.”.

13. Plain reading of the aforesaid provision, in its application in Maharashtra would depict that in case of the application seeking directions under Sub-clause (3) of Section 156 of Cr.PC, Magistrate can order an investigation against the public servant in respect of the act done during course of or discharge of his official duty, only when previous sanction under section 197 of the Cr.PC. has been obtained. From aforesaid provision it is discernible that the previous sanction under section 197 of Cr.PC. is condition precedent even for issuing directions for investigation in exercise of powers under sub-clause (3) of section 156 of Cr.PC. The second proviso appended to Maharashtra amendment prescribes that if the application is made to the sanctioning authority and

proposal for sanction is not decided within a period of 90 days, the Magistrate may presume deemed sanction.

14. To ascertain as to whether any proposal was made in this regard to the sanctioning authority, we called upon the learned APP to take instructions. On getting such instructions, he made candid statement that no such proposal was made in the present case. In this background, we find that even the Magistrate had no jurisdiction to entertain the application for issuing directions to investigate against the applicants/public servants. We find that the learned Magistrate has rightly declined to issue directions as prayed by respondent no.5 against the applicants albeit for different reasons. In light of the aforesaid factual and legal position, we are inclined to exercise our inherent powers under section 482 of the Cr.PC and quash and set aside the FIR and consequential proceeding, which according to us is nothing but an abuse of process of law.

15. Although, prayer is made for grant of compensation, attributing illegalities on the part of the respondent nos.3 and 4, i.e. police station officers at Majalgaon, we are not inclined to entertain such prayer for want of adequate details as regards to harassment and consequential losses suffered by the applicants. However, we deem it appropriate to relegate the applicants to appropriate forum to pursue the prayer for compensation. In case, the applicants invoke such alternate remedy, the period of

pendency of this application shall be exempted while counting limitation, if any, prescribed under law.

16. In view of the aforesaid observations, we proceed to pass the following order.

O R D E R

- i. Criminal Application is partly **allowed**.
- ii. The proceeding bearing R.C.C. No.3 of 2021 pending before the learned Judicial Magistrate First Class, at Majalgaon is hereby quashed and set aside to the extent of applicants herein i.e. (accused nos.6 and 7) only.
- iii. The applicants shall be at liberty to prosecute their remedies as permissible under law as regards to prayer clause “C” of the application in line with the observations made herein above.
- iv. Criminal application stands **disposed off**.

(S. G. CHAPALGAONKAR)
Judge

(SMT. VIBHA KANKANWADI)
Judge

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