



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1493 OF 2024

**VAIBHAV BALASAHEB KALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

....
Mr. N. B. Narwade, Advocate for the Petitioner
Mr. N. D. Batule, APP for the Respondent – State
....

CORAM : Y. G. KHOBRAGADE, J.

DATE : 11.11.2024

PER COURT :-

1. Heard Mr. Narwade, the learned Advocate for the Petitioner, at length.
2. Leave to correct the cause title of the Petition invoking Section 482 of the Code of Criminal Procedure, is granted.
3. By the present Petition, the Petitioner has challenged the order dated 16.05.2024 passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Revision Application No.130 of 2023, thereby affirmed the order of refusal to enquiry u/s 156 (3) of Cri. P. C., passed by the learned J.M.F.C. Court

No.6, Ahmednagar on 04.07.2023, in Criminal Misc. Application No.23 of 2023.

4. In short, it is the case of the Petitioner that he filed a private complaint bearing Criminal Misc. Application No.23 of 2023 before the learned J.M.F.C. Court No.6, Ahmednagar and prayed for inquiry under Section 156(3) of the Code of Criminal Procedure for the offence punishable under Sections 417, 420, 465, 466, 468, 471, 120-B r/w Section 34 of the Indian penal Code. According to the petitioner, on 29.08.2019, the original accused Nos. 3 and 4 sold some land under the sale-deed out of undivided share from Gat No. 136/2 to the accused Nos. 1 Vilas Mhase and 2 Suchitra Kulat through the General Power of Attorney to accused No.5. However, while execution of the sale-deed, the original accused No.1 prepared false and fabricated revenue map. Therefore, on 28.12.2020 and 07.07.2021, the Petitioner submitted representations with the Revenue Authority. On 02.09.2021, the Revenue Authority i.e. Deputy Superintendent of Land Record, Ahmednagar, issued a communication stating that, on 31.12.2020, Shri Kailas Bhanudas Mhase (who is not party to the proceeding) obtained the measurement map of the land, however, copy of map which has been

produced for scrutiny, does not show any right of way. Therefore, the petitioner contended that the accused have prepared and manufactured false and fabricated document and committed the offence punishable under Sections 417, 420, 465, 466, 468, 471, 120-B r/w Section 34 of the Indian penal Code.

5. The learned Advocate for the Petitioner canvassed that, on 21.09.2021, the Petitioner lodged a report with the Police Authority alleging as about existence of dispute between him and the Respondent (original accused No.5) Kuldeep Bharat Nimbalkar, who sold 14 R land to the accused Nos. 3 and 4 (Shilpa Nimbalkar and Bharat Nimbalkar), however, no cognizance was taken by the police authorities. Therefore, the Petitioner filed a private complaint Criminal Misc. Application No.23 of 2023 before the learned J.M.F.C. Court No.6, Ahmednagar and prayed for inquiry under Section 156(3) of the Code of Criminal Procedure for the offence punishable under Sections 417, 420, 465, 466, 468, 471, 120-B r/w Section 34 of the Indian penal Code.

6. On 04.07.2023, the learned J.M.F.C. passed an order holding that the Petitioner/complainant failed to produce any

documentary evidence to show that, the accused persons prepared a false and fabricated revenue map and sold the land on the basis of false and fabricated map. So also, the dispute between the complainant and the accused is of civil nature. Therefore, rejected the Application under Section 156(3) Cr.P.C.

7. Being aggrieved by the said order, the petitioner/complainant approached before the Sessions Court in Criminal Revision Application No.130 of 2023. On 16.05.2024, the learned Sessions Court passed the impugned order holding about existing of dispute in respect of share in the property between the petitioner/complainant and accused Nos. 1, 2. However, the accused no. 1 & 2 sold undivided share in favour of the accused Nos. 4 and 5. Since the accused Nos. 1 and 2 sold the portion of their share, therefore, the remedy to the co-sharer to file a civil suit is available, and dismissed the revision.

8. Needless to say that the present Petitioner / complainant and the Respondent Nos. 2 and 3 original accused Nos. 2 and 3 were having undivided share in Gat No.136/2, out of which the original accused Nos. 2 and 3 sold their share in favour of accused Nos. 4 and

5. It is well settled principle of law that the undivided share can be sold. Since the Petitioner/complainant is having his independent share, similarly, the accused Nos. 2 and 3 and both the parties were cultivating their lands separately. Therefore, it appears about existence of civil dispute, which it can be adjudicated by the competent Court, if parties files a civil suit. Though the complainant alleged about preparation of false and fabricated revenue map by the accused, however, the Petitioner can also seek declaration about the said map being illegal and it does not constitute the offence. On perusal of record it does not constitute an offence punishable under Sections 417, 420, 465, 466, 468, 471, 120-B r/w Section 34 of the Indian penal Code. Therefore, I do not find any substance in the present Petition, hence, it is dismissed.

[Y. G. KHOBRADE, J.]

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