



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

12 CRIMINAL WRIT PETITION NO. 1548 OF 2024

- 1] Yahiya Abdulla Makrani
Age: 72 years, Occu.Aгри.,
- 2] Khaled s/o Abdulla Makrani,
Age: 70 years, Occu: Agri.,
- 3] Zuber s/o Abdulla Makrani
Age: 60 years, Occu: Agri.,
- 4] Talha Abdulla Makrani,
Age: 54 years, Occu: Agri.,
- 5] Numan Abdulla Makrani
Age: 50 years, Occu: Household,

All R/o. Manjarsumba Road, Patoda,
Tq: Patoda, Dist. Beed.

- 6] Zubeda W/o Idris Bashan
Age: 78 yrs, Occu: Household,
R/o: Ambad Tq. Ambad,
Dist. Jalna

... PETITIONERS
(Orig. Accused)

VERSUS

- 1] The State of Maharashtra
Through Police Inspector,
Police Station, Patoda
- 2] Mahemuda w/o Hasan Kardus
Age 55 years, Occu: Household,
R/o Patoda, Tq. Patoda,
Dist. Beed

... RESPONDENTS
(R.No.2 Orig.Complainant)

....
Mr. N. L. Jadhav, Advocate for the Petitioners
Mr. C. V Bhadane, APP for Respondent N.1
Ms A. N. Ansari, Advocate for Respondent No.2
....

CORAM : Y. G. KHOBRAGADE, J.

DATE : 25.11.2024

ORAL JUDGMENT :-

1. Heard Mr. N. L. Jadhav, the learned Counsel for the Petitioners, Mr. Bhadane, the learned APP for Respondent No.1 and Mrs A.N. Ansari, the learned Counsel for Respondent No.2.

2. Rule. Rule made returnable forthwith. Heard finally by consent of both the sides.

3. By the present Petition, the Petitioner impugned the order dated 02.08.2014, passed by the learned Sessions Court in Criminal Revision Application No.14 of 2014, thereby confirmed the order dated 26.02.2024 passed by the learned J.M.F.C., Patoda, wherein the process as against the present Petitioners are issued under Section 468 and 471 read with Section 34 of the I.P.C.

4. Having regard to the submissions canvassed on behalf of both the parties, I have gone through the record. The Respondent

No.2 lodged a complaint Misc. Criminal Application No. 145 of 2020 and made the specific allegations that her father Abdulla Bin Sayed Makrani, died on 01.01.1994. She and the accused/present Petitioners are having common interest in the landed property left by her father deceased Abdulla Bin Sayed Makrani. The description of the property is given in Clause (A), (B) of paragraph 2 of the complaint. However, after the death of her father Mr. Abdulla Bin Sayed Makrani, her name as well as all the sons and daughters of Abdulla Bin Sayed Makrani, mutated with the Revenue Authorities under Entry No.14781. The said property never partitioned for metes and bounds. So also, a civil suit bearing Special Civil Suit No.73 of 2008 is pending on the file of the learned Civil Judge Senior Division, Beed. However, on 04.02.2015, the accused have put forged the signature of the accused No.9 and executed consent-deed for recording the mutation entry, though the complainant and Salma, the sister of the complainant never consented. Mrs. Salma is residing in Arab Country. Therefore, the complainant prayed for inquiry under Section 156(3) of Cr.P.C.

5. On 11.10.2021, the learned J.M.F.C. Pachod, rejected the prayer for inquiry under Section 156(3) of Cr.P.C. and placed the

matter for recording of verification under Section 200 of Cr.P.C. Thereafter, the complainant herself entered into witness box and deposed about the contents of the complaint. The complainant further examined one witness Mr. Taher Hasan Bin Kardus, who deposed about putting false and bogus signature of his mother on Rs.100/- stamp paper, so also, the said stamp paper never been purchased in the name of her mother. The report was lodged with the police, but no such report was accepted. Considering the nature of offence, on 03.03.2022, the learned J.M.F.C. passed an order under Section 202 of Cr.P.C. and called the police report. Accordingly, on 19.05.2022, the Investigating Officer submitted report, stating about forge signature of Salma on Rs.100/- stamp paper. So also, the signature of the complainant is forged.

6. On the basis of said report, the learned J.M.F.C. passed an order on 26.02.2024 and issued process as against the present Petitioner accused for the offence punishable under Sections 468 and 471 read with 34 of the Indian Penal Code. The Present Petitioner accused filed Criminal Revision No.14 of 2024, challenging the order dated 26.02.2024 passed by the learned J.M.F.C. below Exh.1 in Criminal Misc. Application No.145 of 2020. On 02.08.2024, the

revisional Court passed the impugned order and dismissed the revision holding that whether the consent deed is forged or genuine has to be adjudicated during the course of trial and process cannot be quashed on oral contention of the accused. Since the trial Court issued the process against the present Petitioner accused for the offence under Section 468 and 471 read with Section 34 of I.P.C. wherein the maximum punishment is provided upto 7 years and punishment upto 2 years for the offence punishable under Section 465. Therefore, as per Section 468 Cr.P.C. the limitation is provided three years for taking cognizance, if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years. Since the process issued against the accused under Section 468 of I.P.C., wherein imprisonment upto 7 years provided, therefore, the complaint is not barred by limitation and the order of issuance of process does not fault.

7. The learned Counsel for the Petitioners canvassed that, the Respondent No.2 original complainant has already filed R.C.S. No.71 of 2018 for the same purpose, for which the complaint has been filed. Therefore, the cognizance on the complaint of Respondent No.2 cannot be taken. However, both the courts below failed to

consider the said fact. Hence, the impugned orders are illegal, bad in law and prayed for quash and set aside the same.

8. In support of these submissions, the learned Counsel for the Petitioner places reliance on the case of ***Gulam Abbas Vs. Haji Kayyum Ali***, 1973 AIR (SC) 554, wherein, the Hon'ble Supreme Court in paragraph Nos. 11 and 12 has observed thus:-

"11. It may be mentioned here that Muslim Jurisprudence, where theology and moral concepts are found sometimes mingled with secular utilitarian legal principles, contains a very elaborate theory of acts which are good (because they proceed from 'hasna'), those which are bad (because, they exhibit 'qubuh'), and those which are neutral per se. It classifies them according to 'varying degrees of approval or disapproval attached to them (see Abdur Rahim's "Muhammadan Jurisprudence" P. 105). The renunciation of a supposed right, based upon an expectancy, could not, by any test found there, be considered "prohibited". The binding force in 'future of such a renunciation would, even according to strict Muslim Jurisprudence, depend upon the attendant circumstances and the whole course of conduct of which it forms a part.. I In other words, the principle of an equitable estoppel, far from being opposed to any principle of Muslim law will be found, on investigation, to be completely in consonance with it.

12. As already indicated, while the Madras view is based upon the erroneous assumption that a renunciation of a claim to inherit in future is in itself illegal or prohibited by Muslim law, the view of the Allahabad High Court, expressed by Suleman, C.J., in Latafat Hussain's case (supra) while fully recognising that "under the Mahomedan law relinquishment by an heir who has no interest in the life- time of his ancestor is

invalid and void", correctly lays down that such an abandonment may, nevertheless, be part of a course of conduct which may create an estoppel against claiming the right at a time when the right of inheritance has accrued. After considering several decisions, including the Full Bench of, the Madras High Court in Asa Beevi's case (supra) Suleman, C.J., observed at page 575."

9. It further relied on the case of ***Shripad & Others Vs. The State of Maharashtra & Others, 2014 AllMR (Cri) 2123***, wherein the coordinate Bench of this Court in paragraph 12, observed thus:-

"12. Govind Ramchandra Deshmukh, Accused No.6, who has filed Criminal Writ Petition No.163 of 2010, claims that the complaint does not make any specific allegation against him to prosecute him. The only allegation against Accused No.6 Govind Deshmukh is that he has filed Civil Suit against the complainant and others and he got the notice registered with the Sub Registrar. The Petition refers to the contents of the complaint to show that no case was made out against Accused No.6. It is claimed that Magistrate should have seen that except some vague, general statements, there was nothing against Accused No.6 to make him face the criminal prosecution. Accused No.6 Govind Deshmukh was not party to any of the sale deed in favour of the complainant and his witnesses, nor he was made aware about execution of the same. The only allegation made against Accused No.6 is that on 14th August 2007, he conspired with Accused No.4 Shripad Deshmukh and got registered notice under Section 52 of Transfer of Properties Act. Conspiracy has been alleged only on such basis. Only because Accused No.4 Shripad Deshmukh was witness in the notice, does not amount to commission of offence. It is not the case of the complainant that before execution of the sale deed, the complainant has taken consent of Accused No.6 Govind Deshmukh or had issued any public notice. For such reasons,

Accused No.6 Govind Deshmukh has also claimed that the process issued against him, needs to be quashed.”

10. It further relied on the case of ***Prabhakar Ramchandra Patki Vs. The State of Maharashtra & Another, 2010 AllMR(Cri) 784***, however, this case is not at all applicable to the facts and circumstances of the present case and does not fall within the ambit of public servant.

11. The learned Counsel for the Petitioner further relied on the case of ***Kinnaresh Trimbak Borkar Vs. State of Goa & Anr., 2021 AllMR (Cri) 4064***, wherein the process issued for the offence under Sections 441, 506 read with Section 34 and 107 of I.P.C. quashed and set aside on the ground of lack of jurisdiction and failure to follow procedure under Section 202 (1) of Cr.P.C.

12. It further relies on the case of ***Lalankumar Singh & Ors Vs. State of Maharashtra, 2022 LiveLaw (SC) 833***, wherein the Hon'ble Apex Court observed in paragraph Nos. 28 to 30, as under:-

“28. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order

need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal vs. Central Bureau of Investigation, which reads thus:

“51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the

accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”

29. A similar view has been taken by this Court in the case of Ashoke Mal Bafna (supra).

30. In the present case, leaving aside there being no reasons in support of the order of the issuance of process, as a matter of fact, it is clear from the order of the learned Single Judge of the High Court, that there was no such order passed at all. The learned Single Judge of the High Court, based on the record, has presumed that there was an order of issuance of process. We find that such an approach is unsustainable in law. The appeal therefore deserves to be allowed.”

13. Per contra, the learned APP canvassed that the complainant made a specific averments in the complaint about her forged signature on Rs.100/- stamp paper, as well as signature of her sister Salma, who is residing Abroad, showing that both the sisters have consented and executed consent deed for mutation the names of the accused with the revenue authorities, though they have not put such signature at any time before. Therefore, substantial evidence is required to prove whether the consent deed is forged or genuine. Therefore, the order passed by both the Courts below, are just and proper and no interference is called at the hands of this Court, hence, prayed for dismissal of the Petition.

14. The learned Counsel for Respondent No.2 supported the findings of both the Courts below. She contended that there is no dispute about execution of consent deed in the year 1981 and 1991 about the relinquishment of right of the complainant. However, the said consent deed/relinquishment deed was in respect of all the agricultural land only. However, Respondent No. 2 claimant specifically made allegations that, on 04.02.2015, the Petitioner accused submitted an application with the Talathi, Patoda and submitted consent letter showing the name of the complainant at serial No.10 and her sisters name at serial No.9 and put their forged signature thereon. Therefore, the act of the accused persons is illegal and they have committed the offence under Section 420, 468 of I.P.C.

15. No doubt, though the complainant prayed for inquiry under Section 156(3) of Cr.P.C. However, on 11.10.2011, the learned J.M.F.C. declined inquiry under Section 156(3) of Cr.P.C. and called upon the complainant for verification of the complaint. Accordingly, the complainant/Respondent No.2 appeared before the Court and testified the averments made in the complaint. The complainant also examined Taher Hasan Bin Kardus, son of the complainant and after satisfaction, the learned trial Court again called the report from the

concerned Police Station under Section 202 of Cr.P.C. On 19.05.2022, the Investigating Officer of Patoda Police Station, submitted inquiry report and after considering the said report, the process issued against the present Petitioners for the offence punishable under Sections 468, 471 read with 34 of the I.P.C.

16. No doubt, the present Petitioners/accused, tested the legality and validity of the order passed by the learned Judicial Magistrate in Criminal Revision No.14 of 2024. On 02.08.2024, the learned Sessions Court dismissed the said revision on the ground that the genuineness of consent-deed cannot be tested without evidence and the order of issuance of process cannot be quashed on oral contention of the accused. So also, the complaint is within limitation.

17. In the case in hand, the learned Magistrate firstly declined to direct inquiry under Section 156(3) Cr.P.C. and had called upon the complainant for verification. Thereafter, the learned Magistrate called inquiry report under Section 202 Cr.P.C., and after satisfying with the said report, process has been issued against the present applicant accused. Though the learned Counsel for the Petitioners contended that the complainant has already filed Civil Suit No.73 of 2018 for the same cause, therefore, the criminal complaint is

not tenable. However, on perusal of prayer of the suit, it appears that the present complainant who is the co-sharer has prayed for decree of partition and possession. In the said suit, the complainant has not prayed for declaration that the consent deed executed and the application for deletion of the name of the complainant and her sister by the accused persons, are illegal. On the contrary the complainant specifically alleged about forging her signature and signature of her sister Mrs. Salma on the application submitted with the Talathi. Therefore, the point involved in the present complaint whether the application dated 04.02.2015 and signature appearing on the stamp paper, are forged or not and said fact cannot be decided without full fledged trial after providing opportunity to lead evidence by both the parties. Therefore, I do not find that the impugned orders passed by both the Courts below are perverse and no any substantial grounds are set out to interfere with the finds of both the Courts below. Hence, the Writ Petition is dismissed. Accordingly, Rule is discharged.

[Y. G. KHOBRAGADE, J.]