

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.186 OF 2018

Pandurang Kashinath Galande,
Age : 69 years, Occu. : Agri.,
R/o. : Undirgaon, Tq. Shrirampur,
Dist. Ahmednagar.

... Applicant
[Orig. Complainant]

Versus

1. Nanasaheb Kashinath Galande,
Age : 58 years, Occu. : Agri.,
R/o. : Undirgaon, Tq. Shrirampur,
Dist. Ahmednagar.
2. Madhav Laxman Deshmukh,
Age : 65 years, Occu. : Service,
R/o. : Shrirampur Tahsil Office,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.
3. Anil Devichand Gavhane,
Age : 51 years, Occu. : Service,
R/o. : Kharwandi, Tq. Newasa,
Dist. Ahmednagar.

... Respondents.
[Orig. Accused]

...
Mr. D. G. Nagode, Advocate for Applicant.
Mr. P. S. Dighe, Advocate for Respondents Nos.1 to 3.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12th MARCH, 2024

PRONOUNCED ON : 18th MARCH, 2024

ORDER :

1. Dissatisfied by the judgment and order of acquittal passed by learned Judicial Magistrate First Class, Court No.2, Shrirampur, Dist. Ahmednagar in R.C.C. No. 142 of 2005, original complainant is hereby seeking leave to file appeal.

2. Learned counsel for applicant pointed out that, he had instituted complaint against respondents for commission of offence under sections 466 and 468 read with section 34 of Indian Penal Code (IPC). He pointed out that, complainant and accused no.1 are real brothers. They had exchanged ancestral properties, which had come to their share and each is in possession of respective share. He pointed out that even complainant's name is recorded in the mutation entry. In spite of so, accused no.1 brother with hand in gloves with respondent no.2 and 3, revenue officials, got his name entered in the mutation entry, on the strength of sale deed. According to him, accused nos.2 and 3 intentionally help respondent no.1. They had committed offence under sections 466 and 468 of IPC, and therefore, complaint was filed against them. It is submitted that, all necessary ingredients for attracting such offences were available. However, learned trial court has acquitted the accused from all the charges. There is improper appreciation of evidence as well as law by learned Judicial Magistrate First Class, Shrirampur. Applicant has good case on merits and hence he prays to grant leave.

3. Per contra, learned counsel for respondents accused pointed out that, complainant failed to make out the case. Civil disputes are still pending and have not reached to the logical

conclusion. There was no evidence of commission of offence under sections 466 and 468 of IPC. Essential ingredients for the same were missing. Complainant himself has admitted that, litigation is still pending decision and therefore, complaint itself was prematured and hence was rightly rejected. Even no necessary sanction has been obtained to prosecute accused nos.2 and 3 who were Government officials. Resultantly, he submits that no fault can be found in the conclusion reached at by learned trial Judge.

4. After considering the submissions of each of the side and on going through the papers, it seems that, private complaint was instituted against accused no.1 brother and accused nos.2 and 3 being a public servants. Sum and substance of the complaint is that, accused no.1 got his name mutated in revenue record by conniving with accused nos.2 and 3 by forging and creating documents. Accused nos.2 and 3 did not follow due procedure contemplated under law and hence are required to be prosecuted for commission of offence under sections 466 and 468 of IPC.

5. Apart from denial, defence of accused is that, there is no sanction for prosecuting accused nos.2 and 3.

6. It is noticed that, there is civil dispute which is pending. The mutation entry, which is pinching complainant is also not attained finality. In the entire complaint, except

averments how his own brother accused no.1 with hand in gloves got the mutation entry entered is not clarified. His own witness failed to face cross examination. Resultantly, there is no corroboration in the evidence of complainant. When allegations of forgery of record are levelled, it has to be proved that documents have been forged. As stated above, mutation entry has not been finalized. Essential ingredients for attracting section 466 of IPC are patently missing. It has to be demonstrated that, the forgery was with intention to cheat. Unless it is shown that, intentionally accused nos.2 and 3 for benefit of accused no.1 created and granted mutation entry, they cannot be held responsible. Even grant of sanction is shown to be pending with Collector, and therefore, such reason also, prosecution was prematured. Answers given by complainant while under cross weakens his own case.

7. Therefore, there is no good ground to hold that learned trial court failed to appreciate the evidence and case properly, so as to grant leave as prayed. Hence, I proceed to pass following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)