IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.962 OF 2021

1. Sumant s/o Bhagwat Ghadge,
2. Anant s/o Bhagwat Ghadge,
3. Maharudra s/o Bhagwat Ghadge,
4. Vitthal s/o Pandurang Andil,
5. Rajebhau s/o Kisan Ghadge,
6. Gopinath s/o Nivrutti Kale,
7. Yashwant s/o Kisanrao Chavan, ... **PETITIONERS**

VERSUS

1. The State of Maharashtra,
   through the Police Inspector,
   Ambajogai Rural Police Station
   Tq. Ambajogai, Dist. Beed,

2. Jagannath s/o Vitthalrao Ghadge ... **RESPONDENTS**

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Advocate for petitioners: Mr. Shailendra S. Gangakhedkar
A.P.P. for respondent/State : Mr. Amar V. Lavte
Advocate for respondent No.2 : Mr. Ajay S. Deshpande

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WITH
CRIMINAL WRIT PETITION NO.1470 OF 2021

Jagannath Vitthal Ghadge ... **PETITIONER**

VERSUS

1. The State of Maharashtra
   through the Police Station Officer,
   Ambajogai – Rural, Dist. Beed
2. The Superintendent of Police,
   Beed
3. The Special Inspector General of Police,
   Aurangabad Range, Aurangabad
4. The Additional Chief Secretary,
   Home Department,
   Mantralaya, Mumbai 400 032. ... **RESPONDENTS**

...

Advocate for petitioner : Mr. Ajay S. Deshpande
A.P.P. for respondents/State : Mr. Amar V. Lavte

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CORAM : MANGESH S. PATIL & SHAILESH P. BRAHME, JJ.

Reserved On : 27.03.2024
Pronounced On : 04.04.2024

ORDER (PER : MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith.

2. In these petitions under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure the petitioners who have been arraigned as accused in Crime No.40/2020 registered with Ambejogai Rural Police Station, District Beed for the offence punishable under Section 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code are seeking quashment of the Crime.

3. In Writ Petition No.1470/2021 the original informant from the same crime is seeking transfer of the investigation to the local crime branch. Since both the matters pertain to the same crime, in order to avoid rigmarole, both the matters have been heard simultaneously and finally with the consent of both the sides.

4. The sum and substance of the allegations as can be deduced from the FIR are to the effect that the revenue record showing the informant to be the owner of 30 Are portion from land Gat No.185 which before a scheme for consolidation of land holdings was implemented in the year 1988 under the Maharashtra Prevention of Fragmentation and

Consolidation of Holdings, Act, 1947 (herein after the Consolidation Act) has been reduced to 22 Are without there being any appropriate mutation, and by the present petitioners-accused Nos.1 to 3 in connivance with the rest of the accused by the co-accused - revenue officials by resorting to forgery. It is also alleged that without conducting appropriate inquiry the revenue officials, who have been also accused in the crime, have resorted to some sham quasi judicial proceeding behind his back and without undertaking any procedure, order was passed for correction of the revenue record under the guise of error in the scheme implemented under the Consolidation Act.

5. The learned advocate Mr. Gangakhedkar for the petitioners – accused would take us through the papers and would submit that it is merely a matter of implementation of a scheme under the Consolidation Act. Appropriate proceeding under Sections 31A and 32 (1) were taken out. Co-accused - Deputy Superintendent of Land Records Mr. Veer after undertaking the quasi judicial process as contemplated under the consolidation Act passed the order and directed correction of the revenue record. Even if that order has been subsequently reviewed and superseded by the successor in the office, it is purely a civil dispute. No criminality is involved. The father of the petitioners Nos.1 to 3 - Bhagwat and father of the respondent No.2 - informant Vitthal were the real brothers. Land survey No.58 totally admeasuring 1 Hectare 37 Are was a joint family property standing in the name of their father. Each one of

them that is Bhagwat and Vitthal were having half share. However, while implementating consolidation scheme an error had occurred. Bhagwat was allotted 60 Are land, whereas, Vitthal was shown to have 69 Are land. Therefore, the area was corrected by resorting to the appropriate procedure as contemplated under the Consolidation Act. The respondent No.2 - informant has tactically lodged the FIR to pressurize all the accused persons. It would be abuse of the process of law to make the petitioners face the trial.

6. Mr. Gangakhedkar would further submit that co-accused - Dr. V. N. Veer the then Superintendent of Land Records, Beed has already been discharged. Even co-accused - Ramkrishna Dnyaneshwar Kalekar who was serving as a correction clerk in the office of the Taluka Inspector of Land Records, Parali had approached this Court in Criminal Application No.1757/2021 and by the order dated 14.12.2023, the crime to his extent has also been quashed.

7. Lastly, Mr. Gangakhedkar would submit that no offence can be made out much less any ingredient for the offences punishable under Section 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code.

8. Mr. Gangakhedkar would place reliance on the decision of the Supreme Court in the matter of **Deepak Gaba and Ors. Vs. State of Uttar Pradesh and Anr.; (2023) 3 Supreme Court Cases 423**.

9. Per contra, the learned APP and the learned advocate

Mr. Deshpande for the respondent No.2 – informant would strongly oppose the petition seeking quashment of the crime. They would submit that irrespective of the correctness of the Consolidation Scheme, once it was implemented there could not have been any correction in the revenue record unless the procedure contemplated under the Consolidation Act was undertaken. Though subsequently such a proceeding under Section 31A and 32(1) of the Consolidation Act seems to have been undertaken, it was only with a view to salvage some ground. Even before co-accused - Dr. Veer the then Superintendent of Land Record could pass any order the revenue record was corrected. There was no mutation entry as is required by the Maharashtra Land Revenue Code and the Rules framed thereunder. False revenue record was prepared and presented in the office undertaking the consolidation scheme based on which, without following procedure bogus panchanama was prepared. There is a statement of one of the Panchas recorded under Section 161 of the Code of Criminal Procedure, expressly denying his signature thereon which would clearly demonstrate that even the proceeding subsequently initiated for correction of consolidation scheme was an eyewash.

10. They would further submit that even Mutation Entry No.537 was certified illegally showing incorrect extent of the land standing in the name of Anant. They would point out that realizing the gross illegalities, the successor District Superintendent of Land Records, Beed has restored

the consolidation record expressly observing that the direction for correction of the consolidation record by his predecessor was without following due process and the rules and was done ignoring the revenue record and relying upon forged and bogus revenue record.

11. Learned advocate Mr. Deshpande for the respondent No.2 – informant would additionally submit that since inception he has been alleging that the investigation is not being carried out properly. He had to pursue the authorities and even to approach the Court and somehow could manage to get the offence registered. The informant, therefore, has been requesting for transfer of the investigation.

12. We have considered the rival submissions and perused the papers of the investigation. Apparently there is no dispute about the fact that the father of the petitioner Nos.1 to 3 who have been arraigned as accused Nos.1 to 3, by name Bhagwat and the father of the respondent No.2 – informant by name Vitthal were the real brothers and inherited a share in land survey No.58 from their father which was totally admeasuring 1 Hectare 37 Are. There is also no dispute about the fact that during implementation of a scheme under the Consolidation Act, while forming Gat No.185 the division was unequal. Respondent No.2 – informant was allotted 30 Are portion. The scheme was implemented way back in the year 1988 and since then the revenue record continued to demonstrate his being the owner of 30 Are portion from Gut No.185. The revenue record in the form of 7/12 extract *ex facie,* till the year

2005-06 was showing him to be the owner in possession of 30 Are portion from Gut No.185. It is also apparent that even the petitioners have not been able to demonstrate that any mutation as is contemplated under the Maharashtra Land Revenue Code and the Rules framed thereunder was certified so as to undertake alteration in the extent of land standing in the name of respondent No.2 – informant. Abruptly from then onwards that is the year 2006-07 onwards the revenue record was altered by reducing the extent of land to 22 Are. The petitioners could not demonstrate as to how this could have happened but for the revenue officials having acted hand-in-gloves with them.

13. In the absence of any such procedure having been followed under the relevant law for making alteration in the revenue record this fact would be clinching.

14. It is also apparent that respondent No.2 – informant could derive the information under the Right to Information Act, 2005 by making application to the office of the District Superintendent of Land Records, wherein, he could realize that incorrect rather false revenue record was tendered by the petitioners Nos.1 to 3 by moving an application seeking correction of the scheme that was finalized under the Consolidation Act. Irrespective of the fact whether this could have been done by resorting to an appeal under Section 247 of the Maharashtra Land Revenue Code, 1966, instead of resorting to the appropriate provision contained in the Consolidation Act in the form of Section 31A

and 32(1), the proceeding was treated apparently under that provision and the direction for correction under Section 31A were passed by co-accused - Dr. Veer, the then District Superintendent of Land Records. We do not intend to make any comment about his role, inasmuch as, the trial court has already discharged him and respondent No.2 – informant seems to have challenged that order in a revision.

15. The fact remains that this proceeding seeking correction in the scheme finalized under the Consolidation Act by resorting to Section 31A and 32(1) and the order passed therein is of the year 2016. At the most, pursuant to the order passed under that section in that proceeding the correction in the revenue record could have happened thereafter. However, the copies of the 7/12 extract produced by petitioners Nos.1 to 3 while preferring that proceeding styled as appeal under Section 247 of the Maharashtra Land Revenue Code clearly demonstrates that for the subsequent years that is 2006-07 onwards it was corrected to depict that respondent No.2 – informant was the owner of 22 Are portion when till then i.e. up to the year 2005-06 he was shown to be the owner in possession of 30 Are portion.

16. This very fact demonstrates *prima facie* that false revenue record was produced before the District Superintendent of Land Records, Beed in order to solicit an order for correction of a scheme by resorting to Section 31A and 32(1) of the Consolidation Act. One need not delve deep to observe that petitioners Nos.1 to 3 were the beneficiaries of such

alteration and their attempt to demonstrate that it is merely a matter of civil dispute is nothing but an eye wash.

17. Their conduct in again getting Mutation Entry No.537 to be certified on 18.10.2015 showing share in Gut No.185 as 69 Are which in fact was not that much in the Revenue Record, clearly substantiates the inference that they have indulged in forgery and have used the forged documents to solicit an order under Section 31A of the Consolidation Act. In our considered view, these facts and circumstances clearly make out all the ingredients for the offences being pressed against petitioner Nos.1 to 3 and it cannot be said that it is a matter of either lack of material or abuse of the process of law. Consequently they are not entitled to even derive any benefit from the decision in the matter of **Deepak Gaba** (supra).

18. Again, quashment of crime to the extent of co-accused - Ramkrishna Dnyaneshwar Kalekar who was a correction clerk in the office of the Taluka Inspector of Land Records, Parali, would not enure to the benefit of petitioners Nos.1 to 3. The role attributed to him is clearly distinct from the one attributed to them.

19. However, as far as the petitioners Nos.4 to 7 are concerned, they are stated to have been party to the Panchanama conducted by the office of the Deputy Superintendent of Land Records in connection with the matter being inquired into. There is nothing on the record to demonstrate that they have indulged in any crime *albeit* it is being

vaguely alleged that they have participated in demonstrating that a Panchanama was conducted which in fact was bogus.

20. True it is that one of the Panchas namely Pandhari Dnyanoba Chavan in his statement under Section 161 of the Code of Criminal Procedure has denied to have signed the Panchanama and has disowned his signature thereon. However, apart from the fact that he has not attributed anything to petitioners Nos.4 to 7, and there is no other material on the record to demonstrate that petitioners Nos.4 to 7 having indulged in any criminal act with the requisite *mens rea*. In view of such state of affairs, in our considered view it would be abuse of the process of law to allow petitioners Nos.4 to 7 to face the prosecution with the quality of material, rather lack of it.

21. So far as Writ Petition No.1470/2021 is concerned the informant has been seeking transfer of the investigation, since the charge sheet has been filed already. In our considered view, an alternate and efficacious remedy is available to him to resort to the appropriate proceeding as is laid down in the matter of **Vinubhai Hirabhai Malaviya V. State of Gujarat, (2019) 17 SCC 1**.

22. The Writ Petition No.962/2021 is allowed partly.

23. The Crime No.40/2020 registered with Ambejogai Rural Police Station, District Beed for the offence punishable under Section 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code to the extent of petitioners Nos.4 to 7 namely Vitthal s/o Pandurang Andil,

Rajebhau s/o Kisan Ghadge, Gopinath s/o Nivrutti Kale and Yashwant s/o Kisanrao Chavan, is quashed and set aside.

24. The writ petition No.962/2021 to the extent of petitioners Nos.1 to 3 namely Sumant s/o Bhagwat Ghadge, Anant s/o Bhagwat Ghadge and Maharudra s/o Bhagwat Ghadge is dismissed.

25. Criminal Writ Petition No.1470/2021 is disposed of with liberty to the petitioner (informant) to resort to the remedies as contemplated in the matter of **Vinubhai Hirabhai Malaviya** (supra).

26. The Rule is made absolute in above terms.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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