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

CRIMINAL WRIT PETITION NO. 1181 OF 2024

**RAMCHANDRA DIGAMBAR LOLGE
VS
STATE OF MAHARASHTRA AND OTHERS**

Mr. Yuvraj V. Kakde, Advocate for the petitioner
Mr. S. B. Jadhav, APP for the respondent Nos. 1
Mr. Yogesh Arun Jadhav, Advocate for respondent No.2
Mr. A. S. Barlota, Advocate & Mr. S. K. Barlota, Advocate for
respondent No.3

CORAM : KISHORE C. SANT, J.

RESERVED ON : 03rd JULY, 2025

PRONOUNCED ON : 24th JULY, 2025

P. C.

1. Heard all the advocates representing respective parties.

2. This petition is taken up for final disposal at the stage of admission with the consent of the parties.

3. By way of filing this petition, the petitioners have approached this court challenging an order dated 05-06-2024

passed below application below Exh.27 by the learned JMFC, Paithan in RCC NO. 154 of 2003. By way of impugned order the learned JMFC allowed the application and directed to issue summons to the petitioners to face trial for the offences punishable under sections 420 and 468 read with section 34 of the Indian Penal Code.

4. The application was filed by present respondent No. 2-informant under section 319 of the Cr. P. C. praying to add the petitioners as accused in the said trial. The informant filed an application stating that some material collected in investigation and placed on record is sufficient enough to summon the present petitioners as accused.

5. It is the case of the informant that this order came to be passed after framing of charge and after first witness was to be examined.

6. The learned advocate for the petitioners vehemently

argued that there is nothing on record to show even remote connection between the present petitioners and the offence. The order is passed only on assumptions and presumptions. No specific case is made out. He submits that order is erroneously passed by the learned JMFC.

7. The learned advocate for the petitioners relied upon the following judgments:

- a] Kailas Vs State of Rajasthan and Anr¹*
- b] Bholu Ram Vs State of Punjab and Anr²*
- c] Sukhpal Singh Khaira Vs State of Punjab³*

8. The learned advocate for respondent No.2 vehemently submits that in the present case allegations leveled are of cheating and fabrication of documents. The sale deed was executed on 01-08-1979 between respondent Nos. 2 and 3. Respondent No.3 is an accused. In the sale deed description of the property is given. So as to deceive respondent No.2, another sale deed came to be executed between respondent No. 3 and

1 AIR 2008 SC 1564

2 2008 AIR SCW 6258

3 2023 (2) Mh. L. J. (Cri) 210

present petitioners on 12-10-2000. It is thereafter, correction deed is executed whereby four boundaries of the property were corrected. On the Western side road and survey No. 178 was shown. Same is corrected showing on Western side only Survey No. 178. He, thus, submits that by changing the layout, description of the property was changed and thus there is cheating. The learned advocate for the respondent thus submits that the learned Magistrate has rightly passed the order.

9. The learned APP also submits that the learned Magistrate has rightly passed the order. No illegality is committed. The learned APP also opposes the petition.

10. This court has gone through the petition. The criminal proceedings arose out of the information given by the respondent No.2 on 26-03-2002. It is the allegations that he purchased the property plot No. 5 from land Survey No. 178 from respondent No. 3 on 01-08-1979. The layout of the said survey number was approved on 26-04-1974. Respondent No. 3

thereafter changed the layout on 20-07-1983 after purchase of plot by the informant without consent of the informant. It is alleged that this revised layout is prepared only to grab plot no. 5. The police registered the offence on the basis of statement and filed the charge-sheet. The supplementary statement of complainant was also recorded on 20-05-2003. It is stated in the supplementary statement that because of the change in layout the plot was still not mutated in his name in the record of Municipal Council. The learned court framed the charge against respondent No. 3 on the basis of material available on record.

11. Evidence of respondent No.2- informant was recorded on 03-03-2022. Application was filed on 16-03-2019 on which the present order came to be passed.

12. It is seen that there is civil suit pending between the parties. Respondent No. 2 has filed RCS No. 118/2003 in the court of Learned JMFC, Paithan with prayers of declaration that the informant is owner of plot No. 5, adm. 56 fts x 90 fts i.e.

5040 sq. fts. The revised layout plan be declared as illegal, null and void and not binding upon the informant and further prayer is made for possession of the said plot. The informant also filed special civil suit No. 389/2007 in the court of learned Civil Judge Senior Division, Aurangabad with the similar prayers. The petitioners have produced on record construction permission dated 12-07-2002 in favour of respondent No. 2- original accused. On record the decision/letter in favour of the respondent No.2-informant of the State Government dated 10-12-2003 is also produced stating that plot No. 5 purchased by informant is not in existence in view of revised layout. It was directed to get exact location of plot No. 5 fixed from the office of Assistant Director Town Planning, Aurangabad and to get it sanction from Deputy Director Town Planning, Aurangabad Division. Thus, on this facts it is sought to be contended that the original accused-respondent No. 3 has sold the plot to the present petitioners and thereby informant is deceived and the application came to be filed under Section 319 of the Cr. P. C.

13. In the case of *Kailas (supra)* the Hon'ble Apex Court considered the provision of section 319 of the Cr. P. C. It is held that during the trial it has to appear from the evidence that a person who is not an accused has committed any offence for which such person could be tried together with the accused who are being tried. It is considered that key wording 'It appears from the evidence', 'any person' has committed any offence. It is held that it is not merely because some witnesses have mentioned the name of such person or that there is some material against that person. Discretion under section 319 would be used by the court when it is satisfied that some offence has been committed by such person.

14. In the case of Bholu Ram (Supra) it is held that the application for summoning the additional accused can be filed even by an accused. No time limit for filing such application is prescribed.

15. In the case of Sukhpal Singh Khaira (Supra) five Judges Bench of the Hon'ble Apex Court considered the scope of exercising power under section 319 of the Cr. P. C.

16. Considering all aforesaid judgments, it is clear that it is open for the court to summon a person who is not accused in the case by exercising power under section 319 of the Cr. P. C. However, there needs to be some material appearing in the evidence to show that such person also needs to be tried alongwith accused persons in the trial. In the present case, it is the allegation of the informant that he purchased the plot in the year 1983 as per layout then in existence. Subsequently, accused changed the layout whereby the location and the description of the plot No. 5 was changed. After getting the layout revised, the accused sold the same plot to the present petitioners. Further allegation is that after executing sale deed correction deed is executed thereby again the description of the plot is changed. It is the allegation that thereby the informant is cheated.

17. Looking to the allegations it is seen that the plot belonging to the informant is again sold to the present petitioners. There is no case that it is at the instance of the present petitioners layout is changed or that he had knowledge that plot is already sold to the informant. Taking the facts as it is, it appears that plot which was already sold to the informant, as per allegations in the complaint, is sold to present petitioner. Further it is seen that the application was filed even before recording of the evidence of the complainant. The application was filed on 16-03-2019 whereas evidence is recorded on 03-03-2022 on Exh. 27. The order dated 20-08-2022 passed below Exh.27 in RCC No. 154/2003 by the JMFC, Paithan was set aside with liberty to pass an appropriate orders after recording satisfaction based on the evidence on record in trial. This order was passed in Writ Petition No. 1695/2022. It is thereafter, the learned JMFC has passed the order dated 05-06-2024 on an application Exh.27.

18. In between, the evidence came to be recorded on 03-

03-2022. Looking to the evidence of the informant, he stated that he was deceived by respondent No. 3. Plot No. 5 in the revised layout was superimposed. In the said evidence no name of the petitioners appears.

19. From looking to the impugned order it is seen that the learned Magistrate noted that in the revised layout description of the property was changed. The informant was required to issue public notice not to purchase plot No. 5 in survey No. 178. It is noted that after publication of the public notice, the present petitioners purchased the plot. The original accused sold the non-existent plot No. 7 and 7-A as per revised layout plan to the proposed accused persons. i.e. petitioners and one other on 12-10-2000. It is observed that said plots are not seen in the layout plan of 1974. It is observed that from the documents on record there is possible involvement of the proposed accused persons in creating false documents and the involvement of the proposed accused in commission of the offence cannot be ruled out. An inference is drawn that the main

accused has committed forgery and cheating causing wrongful loss to the complainant in connivance with the proposed accused.

20. Considering section 319 and considering wording of section 319 this court has to consider whether there is any material appearing on record against the proposed accused by keeping in view of the ratio in the case of *Kailas (Supra)*.

21. Looking to the order it is clearly seen that the court has only drawn an inference that a doubt is created about involvement of the proposed accused in an offence. The court has not drawn a conclusion on the basis of material as such, but has issued summons only on assumption by drawing an inference that the proposed accused are also involved. The wording of the order itself shows that there is no sufficient material on record. It is well settled that what is to be seen is material on record without adding anything to it in by subtracting anything from the same. The present order is an outcome of only inference and suspicion. Merely on the basis of

suspicion it cannot be said that persons are involved in the offence. The Suspicion however, grave will not take place of evidence. In the present case looking at the evidence of the complainant, it does not show direct involvement of the present petitioners. So far as forgery is concerned, there is no allegations that these petitioners have committed any act of forgery. No involvement is shown of the petitioners in the actual forgery. On the contrary, revised layout is sanctioned by the Government. This court, thus finds that the order passed by the learned Magistrate suffers from error of law. This court finds substance in the writ petition. The writ petition, needs to be allowed by quashing and setting aside the impugned order.

22. In view of above, the criminal writ petition stands allowed in terms of prayer clause-B.

[KISHORE C. SANT, J.]