



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 961 OF 2023

SHANTA KISAN @ RADHAKISAN SHELKE AND OTHERS
VERSUS
SAHEBRAO KASHINATH DAPKE AND OTHERS

...
Advocate for the Petitioners : Mr. N. K. Tungar
Advocate for Respondents : Mr. A. R. Borulkar
...

CORAM : SACHIN S. DESHMUKH, J.
Date : 23rd September, 2025

ORDER :-

1. The petitioners have challenged the judgment and order dated 11.04.2023 rendered by the learned Additional Sessions Judge, Aurangabad. By this order, the revision application filed by the respondents is allowed and the order of issuance of process against the respondents herein rendered by the learned Judicial Magistrate First Class, Aurangabad in Regular Criminal Case No. 15 of 2015 was set aside.

2. The land Survey No. 137-A (New Gat No. 428) is the ancestral property of petitioners' / original complainants. The petitioners' grand-father Punjaba Rakhamaji Shelke, died in the year 1963. After his death, petitioners did not carry out in the revenue record. In the year 1985, taking advantage of similarity in

name of the grand-father, the father of the accused / respondents herein, in collusion with Revenue Officer got mutated name in the revenue record. Thereafter, Kashinath mutated the names of his sons in revenue record in relation to the land, therefore, it is alleged that, the father of present respondents committed fraud in connivance with Revenue Officer and the other Revenue Authorities and managed to effect their names in the record.

3. Consequently, the recourse was taken by the petitioners by presenting a complaint under Section 156(3) of the CrPC, with an assertion that the present respondents have committed the act constituting the offences punishable under Sections 420, 468 and 471 read with 34 of the Indian Penal Code (hereinafter "IPC" for short). The learned Magistrate passed an order issuing process against the respondents. The order was challenged by the respondents before the Additional Sessions Judge in revision application. The Revisional Court, after considering the delay caused in the filing the proceeding before the learned Magistrate and considering the litigations pending before the Revenue Authorities, allowed the revision application and consequently, quashed the order rendered by the learned Magistrate.

4. Learned counsel for petitioners submits that the Revisional Court has committed an error in allowing the revision application, ignoring the allegation of impersonation committed by the present respondents. Considering the act of impersonation, the learned Magistrate was justified in passing the order of issuance of process against the respondents, and therefore, same ought not to have been interfered with.

5. On the other hand, the learned counsel for respondents supported the impugned order contending that the petitioners have not approached this Court with clean hands, by suppressing the fact that the civil proceedings instituted by the petitioners were dismissed. Further submitting that there is no document in the name of the petitioners since 1966 as the land is in the name of the ancestors of the respondents. Hence, prayed for dismissal of the petition.

6. Heard learned counsel for the petitioners as well as the respondents, perused the record made available.

7. It is a matter of record that after the death of grand-

father of the petitioners in the year 1963, the petitioners' father during his lifetime, has not raised any objection except filing the revenue proceedings, those are still pending and are not further prosecuted. As far as the filing of the civil suit is concerned, same is also abandoned by the present petitioners. It is in the year 2015, after an unexplained and inordinate delay of more than 40 years, the present complaint is filed with an assertion that the respondents have committed the above-said offences as asserted in the complaint. Petitioners' attempt to confer the cloak of criminality to the subject which is essentially of civil nature. Nevertheless, same is asserted after an unexplained and inordinate delay of more than four decades thus, fallacy in such assertion is rather apparent.

8. Therefore, I am of the considered view that the Revisional Court is justified in setting aside the order of the Magistrate while allowing the revision. Resultantly, the impugned order does not warrant any interference. As such, the writ petition stands **dismissed**.

(SACHIN S. DESHMUKH, J.)

Omkar Joshi