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criwp1034.22

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

**CRIMINAL WRIT PETITION NO.1034 OF 2022
BHASKAR SARJERAO DARADE**

VS

THE STATE OF MAHARASHTRA AND OTHERS

Mr. N. B. Narwade, Advocate for the petitioner
Mr. R. B. Dhaware, APP for the respondents No.1
Mr. A. N. Nagargoje, Advocate for respondent Nos. 2,3,5 & 6
Mr. R. V. Naiknaware, Advocate for the respondent No. 4
Mr. R. R. Karpe, Advocate for the respondent No. 7

AND

**CRIMINAL WRIT PETITION NO.1036 OF 2022
BHASKAR SARJERAO DARADE**

VS

THE STATE OF MAHARASHTRA AND OTHERS

Mr. N. B. Narwade, Advocate for the petitioner
Mr. R. R. Karpe, Advocate for the respondent No. 2
Mr. R. B. Dhaware, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

RESERVED ON : 18th JULY, 2025

PRONOUNCED ON : 18th AUGUST, 2025

P. C.

1. Both these writ petitions are arising out of the same proceedings and therefore, are taken together. Both the petitions are filed by the same petitioner-original complainant where accused Vinod Garje i.e. respondent No. 2 in Cri. Writ Petition

No. 1236/2022 and respondent No. 7 in writ petition No. 1034/2022 are the same. The facts in short are as follows facts.

2. That the present petitioner filed OMA No. 202/2016 in the court of learned JMFC, Pathardi against the respondents for the offences punishable under Sections 420, 166, 167, 465, 466, 467, 468, 471, 504, 506 read with section 34 of the IPC. It is alleged that accused No.1 has purchased the land alongwith structure from his mother Sundarbai Garje. It is alleged that in respect of the said land bogus entries are taken by the accused persons in connivance with each other. The accused Nos. 1 to 6 are the Government Officers working in the Land Record Department, Pathardi and one accused No.4 i.e. Nanabhau was the Chief Officer, Municipal Council, Pathardi. The allegations are that by taking entry in connivance with each other the area of the land purchased by accused No. 1 is shown to be more than what he purchased and thus the accused persons have committed an offence.

3. So far as Cri. Writ Petition No.1036/2022 is out of the same facts from another complaint. In both the matters a challenge is to the common order dated 30-05-2022 passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Revision Application No. 43/2019 & 123/2019.

4. Both the revision application of the petitioner came be dismissed. In Cri. Revision Application No.43/2019 a challenge was to the order dated 01-03-2019 in Cri. M. A. No.202/2016 passed by the learned Magistrate, Pathardi for not issuing process under sections 204 of the Cr. P. C. and dismissed the complaint against accused No. 1 for the offences punishable under Sections 166, 167, 504, 506 of the IPC and issuing process only for the offences under Sections 420, 465, 466, 467, 468 and 471 of the IPC and dismissed the complaint entirely against accused Nos. 2 to 6 being public servant.

5. The revision application was filed by the accused No.1 challenging order issuing process for the offences under

Sections 420, 465, 466, 467, 468 and 471 of the IPC.

6. It is the case of the complainant i.e. present petitioner that he purchased the land adm. 190 sq. mts. from survey No. 3/1 situated at Pathardi on 18-03-2016 and is in possession of the said land. On West side of his land there is plot No.977, adm. 2640 sq. fts. out of that land, accused No. 1 purchased 1440 sq. fts. land alongwith construction on 22-11-2022 from Sundarabai Garje. Mutation entry No. 3016 came to be recorded in favour of the complainant. However, same is not confirmed as accused No. 1 in connivance with accused No. 2 to 6 kept that entry pending. Thereafter, it is alleged that they prepared false record in respect of the CTS No. 977 and shown the area as 165.30 sq. mts. which was in fact 133.82 sq. mts. Accused No.4-the Chief Officer of the Municipal Council sanctioned the permission for construction on the said plot. That entry is falsely taken. It is, thus, alleged that accused No. 1 encroached upon the land of the complainant. Accused Nos. 5 and 6 Surveyor wrongly measured the land showing excess land

in favour of the accused No.1. On this complaint the learned Magistrate issued process only against accused No.1 as stated above and dismissed the complaint against other.

7. Mr. Narwade, learned advocate for the petitioner vehemently argued that in the present case it is clearly seen that accused persons have created false and bogus record in respect of the land survey No. 977. A case was clearly made out against all the accused persons. The learned JMFC, Aurangabad rejected the complaint as against accused Nos. 2 to 6 being public servant. He submits that even against accused No. 1 the process ought to have been issued for the offence alleged in the FIR. Still has issued the process only under sections 420, 465, 466, 467, 468 & 471. He pointed the sale deeds in favour of the accused and complainant. He submits that notice was also given to the accused persons but still no action was taken. Total land survey No. 977 is 276.7 sq. mts. Out of the said land Sundarabai was having 133.83 sq. mts. However, it was shown that the said entry is of 22-12-2014. However, immediately on 29-12-2014

the area is shown to be 165.30 sq. mts. in the name of Sundarabai. Thus, it is clear that without following any procedure the land in possession of the Sundrabai is shown to be more. Thus, case of cheating is clearly made out. All the entries are by the respondents. Clearly a case was made out to issue process against them as well. Still no cognizance was taken. A report was submitted by the Investigating Officer stating that the area of the land is shown to be 165.30 sq. mts. when in fact the land was adm. 133.83 sq. mts. and stated that offence is made out. Still the court has failed to appreciate the said fact and issued process only against accused No.1 only under Sections 420, 465, 466, 467, 468 & 471 and rejected the same for the offences punishable under Sections 166, 167, 504, 506 against accused No.1 and wrongly rejected the entire complaint against respondent Nos. 2 to 6. He submits that point of sanction would not come at this stage as the respondents are found to have indulged into totally legal act not connected with duty. The observations by the learned JMFC are thus, not correct. He invited attention to the report submitted by the

office of the District Superintendent Land Record wherein it was clearly stated that the officers & employees from his office have cooperated and encouraged the encroachment on the said survey No. 3405. Report was submitted on the application of the petitioner. The petitioner had sought a sanction from the authorities to prosecute the respondents by filing an application. Said application was received on 24-05-2016 by the Chief Assistant Superintendent City Survey Office. The Prevention of Fragmentation Act, Commissioner Pune, which clearly shows that sanction was solicited. However, same is not granted. Thus, there is deemed sanction. The learned Sessions Judge failed to appreciate all these facts. He submits that revision is wrongly rejected. So far as application of mind, he submits that there is no application of mind. In the operative part of the order, itself it is seen that revision application No.43/2019 is dismissed. Revision application No. 123/2019 is allowed. However, further the the order shows that though the revision is dismissed, the order of the Judicial Magistrate is set aside. This runs contrary to each other. He submits that petitions deserves to be allowed.

8. The learned advocate Mr. Nagargoje vehemently submits that dispute is purely of civil nature. The land was originally belonging to one Mohanlal who sold his 245.35 sq. mts area to one Sumatibai. Thus, the area of 31.35 sq. mts. remained with Mohanlal. While taking the entries in the land his name was wrongly deleted from the remaining land. Sumatibai sold the land 111.52 sq. mts out of her 245.35 sq. mts land to one Abdul on 02-05-1980. Thus, remaining land was 133.83 with the Sumatibai. That land of Sumatibai sold to mother of respondent No. 7 i.e. accused No. 1. She sold remaining 133.83 sq. mts land in 2015-2016 to one Vinod and Abdul & filed an application for re-measurement of the land. It is thereafter land 35.83 came to be added to the land of Vinod and Abdul. Said was never challenged by any of the parties. On 17-09-2016 District Superintendent of Land Record had cancelled re-measurement of the part of the land of CTS No. 977. He restored entry in the name of Mohanlal to the extent of 31.35 sq. mts. He cancelled PR card of 977/1 and 997/2 and directed

to keep one PR card of entire survey no. 977 by well reasoned order. The entry is taken on the basis of order. He submits that no record of the land of the petitioner is changed. There is no loss caused to the petitioner. The officers have discharged their duties. There was no application filed seeking sanction from the higher authorities to file a complaint against the officers and the employees of the Land Record. There is no record to implicate the accused Nos. 2 to 6. It is only for the first time on 05-08-2016, a complaint was made.

9. The learned advocate for respondent No. 4- Mr. Naikware submits that the respondent No. 4 was Chief Officer of Municipal Council. He has taken entry on the basis of documents by doing proper verification. In the verification of the complaint also there is no allegation made against the accused No. 4.

10. It is submitted that accused No. 1- respondent No. 7 is the Medical practitioner. The learned advocate for the

respondent No.7 adopts the argument of Mr. Nagargoje. He further submits that in respect of the land a civil litigation is going on. The petitioner has initiated the proceeding only to grant 31 Sq. mtr. land. In any case all allegations would show that this does not fall under the criminal act and is purely a civil dispute. He invited the attention to the prayer in the suit filed by the petitioner. Thus all the respondents prayed for rejection of the both criminal writ petitions.

11. This court has gone through the judgment passed by the learned Sessions Court in both the revisions. From the facts stated above, it is seen that dispute is in respect of recording of the area of the land. It is not the case of the petitioner that by alleged entries his land is reduced or there is variation in area of his land, as it is civil dispute is pending.

12. Considering the argument and the complaint it is seen that allegations are in respect of the measurement of the land. This court does not find any reason to interfere with the

impugned order. There is no sanction obtained to prosecute the accused Nos. 2 to 6. The learned Magistrate considering the case against accused No. 1 has rightly issued process under sections 420, 465, 466, 467, 468 & 471 of the IPC. This court does not find any illegality or perversity in the order. There is no merit in both the petitions. Therefore, both the criminal writ petitions stand dismissed.

[KISHORE C. SANT, J.]

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