



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

CRIMINAL WRIT PETITION NO. 1841 OF 2023

KAZI SAYED MUKHIMODDIN KAZI SAYED DALILODDIN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Petitioners : Mr. Devdatt P. Palodkar
APP for Respondent No.1 : Mr. D. J. Patil
Advocate for Respondent No.2 : Mr. Z. H. Farooqui
...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 16-10-2025

PER COURT:-

1. The petitioners/accused have raised an exception to the order dated 11.10.2023 passed by the learned Additional Sessions Judge, Aurangabad, below Exhibit-12 in Criminal Revision Application No.161 of 2022, endorsing the order dated 18.06.2022 rendered by the learned Judicial Magistrate First Class, Aurangabad, issuing process against the accused for the offences under Sections 420, 468 and 471 of the Indian Penal Code ("IPC") in Regular Criminal Case No.1675 of 2019.

2. After the death of the father of petitioners in the year 1977, while effecting the names in revenue record, the petitioners prepared a false and incorrect affidavit representing themselves as the only legal heirs in the year 1993 which was presented before the Taluka Inspector of Land Records.

3. The Complainant realizing of the said fact presented the complaint under Section 156(3) of the Code of Criminal Procedure ("Cr.P.C.") for the offences under Sections 420, 467, 468, 471 and 120B of the IPC before the Court of the learned Judicial Magistrate First Class, Aurangabad.

4. The learned Magistrate considering the alleged complaint and verification of the Complainant, noted that a *prima facie* case made out against the Petitioners. Accordingly, the learned Magistrate passed the issue process order dated 18.06.2022 against the petitioners for the offenses punishable under Section 420, 468, 471 of the IPC.

5. Aggrieved by the same, the petitioners preferred a Revision Application under Section 397 of the Cr.P.C. before the Sessions Court, Aurangabad. Initially, the order of issuance of process was stayed by the Revisional Court. However, after considering the settled legal position and considering the allegations against the petitioners of having prepared false affidavits as the only legal heirs of the deceased father held that the offence of cheating and forgery was made out. As such, the learned Additional Sessions Judge, Aurangabad, dismissed the revision application vide order dated 11.10.2023.

6. Aggrieved by the same, the petitioners have approached this Court by way of this writ petition under Article 227 of the Constitution of India.

7. Learned counsel for the petitioners submits that the learned Magistrate has grossly erred in issuing process against the present petitioners without assigning reasons. It is further submitted that the Ld. Magistrate has failed to appreciate the police report stating that the dispute between the parties is essentially of civil nature. Hence, the Complainant had attempted to give cloak of criminality to the entire case. Likewise, the Revisional court has failed to appreciate the same and erred in dismissing the revision.

8. Per contra, the learned counsel for respondent No.2/ complainant and the learned Assistant Public Prosecutor for respondent No.1/State supported the orders under challenge and submitted that the suppression of a legal heir and filing a false affidavit constituted offences under Section 420, 468, 471 of the IPC. As such, prayed to dismiss the petition.

9. Heard the learned counsel for the litigating sides and perused the record.

10. Admittedly, the petitioners have prepared affidavit posing the themselves as the only legal heirs of the deceased father, while effecting the names in the revenue record, in exclusion of the complainant.

11. It is a matter of record that after the death of father, the petitioners and the complainant are legal heirs and successors, however, in order to effect their names in the revenue record

consciously and in a clandestine manner with material suppression of the fact that although the complainant was also one of the legal heirs of the deceased father, have prepared and filed affidavit with material suppression and on the basis of the same, the names were effected in the mutation record.

12. The preparation of the false and incorrect affidavit with material suppression of fact sufficiently constitutes an offence of cheating and forgery as alleged by the complainant. The learned Magistrate has, thus, found sufficient material against the accused, for order of issuance of process and adequate grounds to initiate the proceedings. While taking cognizance of the offences by applying judicial mind to the material placed before it. The Revisional Court has accordingly appreciated the order in the light of settled legal position and resultantly dismissed the Revision.

13. The legal position is no more *res integra* in the wake of authoritative judicial pronouncements in the case of *Smt. Nagava vs. Viranna Konjalgi and others* (1976) 3 SCC 736, which forbear the Revisional Court as well as this Court to substitute the discretion exercises by the learned Magistrate.

14. Equally, in the case of *Dushyant Kumar vs. State (NCP of Delhi)*, 2012(2) SCC (Cri) 872, and in the case of *Nupur Talwar vs. CBI and others*, AIR 2012 SC 1921, the Honourable Apex Court has reiterated the legal position that the learned Magistrate need not

pass a detailed order at the stage of issuing process against the accused if satisfied that there are adequate grounds to initiate the proceedings, provided the order is well reasoned one.

15. The perusal of the order passed by the learned Magistrate indicates the application of judicial mind and proper appreciation of the aforesaid legal precedents and its principles. Thus, all the aspects are properly considered by the Courts below while dismissing the challenge put forth by the petitioners.

16. Resultantly, no error is noted in the order of the Revisional Court while dismissing the application presented by the petitioners and the same does not warrant any interference.

17. Considering the fact that Regular Criminal Case No.1675 of 2019 is pending for more than six years, it would be appropriate to direct the concerned learned Judicial Magistrate to conclude the said proceeding preferably within a period of one year from today.

18. The criminal writ petition stands dismissed with aforesaid directions.

[SACHIN S. DESHMUKH]
JUDGE

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