IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4027 of 2019

1. Sachin Tukaram Navgire
2. Prashant Balwantrao Rakhe

VERSUS

1.The State of Maharashtra
2. Shivaji S/o Kishanrao Ghuge

Mr. S. S. Rathi, Advocate for Applicants
Mr. A. R. Kale, APP for Respondent - State
Mr. P. S. Paranjape, Advocate for Respondent no. 2.

CORAM : R. M. JOSHI, J.
DATE : 13th OCTOBER, 2026

PER COURT :-

1. By way of the present application applicants seek quashment of First Information report Crime No. 69/2019 registered at Bamni Police Station Taluka Jintur District Parbhani on 17.08.2019 for the offences punishable under section 420, 217, 218, 406, 467, 468, 469, 471, 34 of Indian Penal Code (For short ' the IPC') along with charge-sheet bearing no. 64/2020 dated 31.12.2020 and quashment of order of issuance of summons dated 12.01.2021 passed by the learned Judicial Magistrate First Class Jintur, District Parbhani.

2. On perusal of the First Information Report, it reveals that, the present case arises out of a property dispute involving agricultural land admeasuring 1 H 57 R in Gut No. 488 situated at village Ambarwadi,

Taluka Jintur, District Parbhani. On 05.06.1985, the complainant's father, Kishanrao Vitthalrao Ghuge, purchased the subject land from the original owner, Raghoji Medsing Jadhav, under Registered Sale Deed 1402/1985. Pursuant to the sale, Mutation Entry No. 106 was recorded in the revenue register, establishing the complainant's father as the absolute owner and possessor of the land. The legal heirs of the Raghoji Medsing Jadhav Accused Nos. 1 to 5 in the FIR allegedly colluded with local government officials Gram Sevak (Accused No. 6), Talathi (Accused No. 7) i.e. applicant no. 1, and Circle Officer (Accused No. 8) i.e. applicant no. 2 to fraudulently enter their names in the land records. The accused no. 7 allegedly submitted a false and fabricated death certificate of late Raghoji Jadhav to claim the land by inheritance. It is alleged that without verifying the earlier registered sale deed or conducting a proper inquiry, the applicant no. 1 proposed Mutation Entry No. 1672 on 15.05.2014, which was subsequently sanctioned by the Circle Officer on 12.01.2015. Thereafter, Mutation Entry No. 1724 was also certified on 10.03.2015. In 2016. Upon obtaining a copy of the 7/12 extract, the complainant discovered the unauthorized mutation entries. Upon inquiring with the Gram Panchayat, the Gram Sevak, accused no 6. confirmed in writing that no official record or entry of Raghoji Jadhav's death certificate existed in the Gram Panchayat register. Since the local police failed to take action on his complaints, the complainant on 29.07.2019 filed a Private Criminal Complaint under Section 156(3) of the Code of Criminal

Procedure before the learned Judicial Magistrate First Class, Jintur. The learned Judicial Magistrate First class passed the order in Criminal Misc. Application No. 208/2019 directed Bamni Police Station to register a First Information Report against all eight accused. Pursuant to the Report, investigation is done and culminated in the filing of charge sheet. The learned Trial Court issued process against present applicants or accused.

3. The learned counsel for the applicants submitted that the applicants are public servants, Applicant No. 1 working as a Talathi and Applicant No. 2 as a Circle Officer, who acted in the bona fide discharge of their official revenue duties. It was contended that the prosecution failed to obtain the mandatory prior sanction under Section 197 of the Criminal Procedure Code, thereby rendering the learned Judicial Magistrate First Class, Jintur order of taking cognizance legally invalid. He argued that sanction must exist prior to taking cognizance. He further argued that a bare perusal of the FIR reveals no allegation against accused no. 6 to the effect that he knowingly or intentionally issued a forged death certificate despite having knowledge of its falsity. Even if it is assumed that sanction could be obtained subsequently, the law mandates that there must be valid sanction prior to taking cognizance, which is conspicuously absent in the present case. It was further argued that the entire dispute is around the title, ownership, and revenue mutation entries concerning land Gut No. 488, which is purely a civil

property dispute currently pending before the Civil Judge Junior Division, Jintur, District Parbhani in R.C.S. No. 48/2019. Counsel submitted that the complainant maliciously initiated criminal proceedings to pressurize the revenue officers and bypass the civil court. Furthermore, it is submitted that the revenue mutation entries processed and approved by the applicants were subsequently upheld on appeal by the Sub-Divisional Officer, Sailu, and the Additional District Collector rejected the application for stay, which demonstrates that the present applicants acted strictly within their official powers and without any criminal intention. He further submitted that the allegations in the FIR as well as the charge-sheet and documents on record fail to make out a prima facie case, as there is no evidence on record that the applicants, on their own, forged or created any fake documents. He argued that the order of issuance of summons dated 12.01.2021 was passed by the Learned Judicial Magistrate First Class, Jintur without applying judicial mind, and continuing such proceedings against public servants constitutes a misuse of the legal process and an abuse of the judicial process. Learned counsel for the applicants relied upon the judgment of the Hon'ble Supreme Court in case of ***Suneeti Toteja v. State of U.P. And Another, AIR 2025 SC 1308 and Atmarram Zubaji Bansode and Another v. State of Maharashtra and Another, AIR Online 2019 Bom 1272.***

4. Learned APP opposed the application by referring to the evidence collected during the course of investigation.

5. Learned counsel for the complainant/Respondent No. 2 opposed application by submitting that the complainant's father purchased 1 H 57 R of land in Gut No. 488 through a registered sale deed in 1985, which was recorded under Mutation Entry No. 106. Consequently, neither the original owner nor his legal heirs, i.e., Accused Nos. 1 to 5, retained any right over the property. It is alleged that the present applicants processed and approved Mutation Entry No. 1672 on 15.05.2014, 15 days before Accused No. 1 had even submitted an application. He argued that the fraudulent mutation was executed on the strength of a fake death certificate claiming that the original owner, Raghoji Medsingh Jadhav, died in 1984, which directly contradicted a previous official entry recording his death in 1986. According to him, the accused no.6 explicitly denied issuing the death certificate dated 12.06.2014, while the official death register was reported missing. He argued that fabricating public records and conspiring to deprive someone of their property cannot be considered official duty. Therefore, the applicants cannot claim protection under Section 197 of the Cr.P.C. Furthermore, upon completion of the investigation, a charge-sheet has already been filed against the applicants, which indicates that a

prima facie criminal case exists and the disputed questions regarding forgery must be decided at trial.

6. Perusal of the record and documents placed on record indicates that the question before this Court is whether continuing criminal proceedings against the applicants, who are public servants working as Talathi i.e. Applicant No. 1 and Circle Officer i.e. Applicant No. 2, is an abuse of the court process. It is undisputed that the actions attributed to the applicants were performed entirely within the scope of their official duties in processing land revenue entries. A bare perusal of the charge-sheet contains no evidence showing that the applicants personally created, forged, or fabricated the fake death certificate. Their role was simply to process the application and papers submitted to them in their official capacity. Apart from the fact that except suspicion raised by informant about collusion between applicants and co-accused, there is no evidence to *prima facie* hold so. There is further no evidence collected during investigation that applicants participated in any act amounting to criminal offence or they are beneficiaries of the crime. Since the act done by them is purported to be done in discharge of their duties, and since the prosecution failed to obtain the mandatory prior sanction under Section 197 of the Cr.P.C. prior to the taking of cognizance, the order of taking cognizance and issuance of summons against the applicants is not sustainable. It is well-settled that obtaining prior sanction is a mandatory

condition precedent before taking cognizance, and the lack of valid prior sanction renders such order illegal. In this regard, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in ***Suneeti Toteja v. State of U.P. And Another, AIR 2025 SC 1308***, where in Paragraph 29 following observations are under:-

> *"29. As per the aforementioned proposition, it is only to be seen if the accused public servant was acting in the performance of his/her official duties, and if the answer is in the affirmative, then prior sanction for their prosecution is a condition precedent to the cognizance of the cases against them by the courts. It is therefore largely a disputed question of fact here and not a question of law. However, this fact of appellant herein acting in her official capacity is not seriously contested by the respondents herein. In the instant case, the appellant had filed the counter affidavit and interacted with the complainant in her capacity of a Presiding Officer, ICC. The correctness of the allegations with regard to the conduct of the appellant need not be ascertained herein by this Court but the fact that she was acting in her official duty is sufficient to hold that a prior sanction from the department was in fact necessary before the Magistrate taking cognizance against her. The Magistrate therefore erred in proceeding to take cognizance against the appellant without the sanction for prosecution being received from BIS, and since BIS has eventually refused to grant sanction for the prosecution of the appellant, the prosecution against the appellant could not have been sustained."*

7. Furthermore, revenue officers certifying mutation entries cannot be accused in criminal cases for forgery or cheating even if it is accepted that the allegations against co-accused (private party) of submitting false papers is true. The presence or absence of a *prima facie*

case against the accused must be gathered strictly from the contents of the FIR and the material collected during investigation. So also, the complainant cannot use an affidavit-in-reply to fill gaps in the prosecution's case. As held in the judgment of the Hon'ble Supreme Court in ***State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335,** continuing criminal proceedings against these public servants without mandatory statutory sanction under Section 197 Cr.P.C. and without a prima facie case against them personally in the FIR constitutes a clear abuse of the process of law.

8. In case the criminal prosecution is permitted to be proceeded against the Government Official without sanction and in absence of any material against them, constituting offence, on their allegations against informant of collusion between accused persons. No public servant would be in a position to discharge his duties without fear. In the facts of the case the criminal proceedings against the applicants cannot be allowed to be proceeded.

9. In view of the above applications stands allowed in terms of prayer clauses 'C', 'C-1', 'C-2".

(R. M. JOSHI, J.)

B. S. Joshi