

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
WRIT PETITION NO. 2584 OF 2023**

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|-----|-----------------------------|----------------|--|
| 1.  | Shri. Anil T. Jain          |                |  |
| 2.  | Shri. Ram H. Wadhwani       |                |  |
| 3.  | Shri. Narendrakumar K. Jain |                |  |
| 4.  | Shri. Kamleshkumar Parmar   |                |  |
| 5.  | Shri. Manojkumar G. Jain    |                |  |
| 6.  | Smt. Chhaya C. Fajal        |                |  |
| 7.  | Smt. Suman A. Jain          |                |  |
| 8.  | Smt. Anita A. Jain          |                |  |
| 9.  | Shri. Sharad G. Vallal      |                |  |
| 10. | Shri. Satish G. Asvale      |                |  |
| 11. | Smt. Laxmi M. Agarwal       |                |  |
| 12. | Smt. Harsha V. Shah         |                |  |
| 13. | Smt. Sangeeta C. Jain       |                |  |
| 14. | Shri. Ashok J. Badaliya     |                |  |
| 15. | Shri. Mahesh V. Gupta       | ...Petitioners |  |
|     | Versus                      |                |  |
| 1.  | The State of Maharashtra    |                |  |
| 2.  | Smt. Aarti M. Kalekar       | ...Respondents |  |

Mr. Pranil Sonawane a/w. Ms Ruchi Rajput, Ms Varsha Gangawane and Mr. Raj Chaurasia i/b Mr.Nikhil Shinde for the Petitioners.

Ms Rutuj Ambekar, APP for the Respondent /State.

Mr. R. V. Govilkar, Senior Advocate a/w. Ms Shaba Khan i/b. Mr.Mihir Govilkar for the Respondent No.2.

**CORAM : SMT ANUJA PRABHUDESSAI &  
N. R. BORKAR, JJ.**

**RESERVED ON : 04 JANUARY 2024.  
PRONOUNCED ON : 05 FEBRUARY 2024.**

**ORDER** (PER N.R. BORKAR, J.)

1. This petition under Section 226 of the Constitution of India read with Section 482 of Code of Criminal Procedure is

filed to quash the First Information Report No.104 of 2023 dated 23 March 2023 registered at Nizampur Police Station, Thane city for the offences punishable under Sections 420, 465, 467, 468 and 471 read with 34 of the Indian Penal Code (I.P.C.) at the instance of respondent No.2.

2. Respondent No.2 has alleged that her father Late Shri. Shashikant J. Wadke, who died on 8 October 1998, was the owner of Municipal House No.203 at City Survey No.1051 ad-measuring 299 sq. mt., Kasarali, Tal. Bhiwandi, Dist. Thane. According to her, her father, during his life time had executed development agreement in respect of the said property in favour of the petitioner No.15, who pursuant to it, constructed thereon, ground plus three floor building consisting of 6 shops and 12 flats. The petitioners are the owners of some of the flats/shops in the said building.

3. According to Respondent No.2, in January 2023, she came to know that the petitioners, without obtaining their consent had formed the society and got it registered as housing society under the provisions of Maharashtra Cooperative Societies Act, 1960. According to respondent No.2, pursuant to the application made by her, the documents filed along with application for registration of society were made available to her and on verification of the said document, she found that false and forged documents were filed along with the application, purportedly executed by her father. Hence, she filed the above mentioned FIR.

4. We have heard learned counsel for the petitioners, learned senior advocate for respondent No.2 and learned APP for the respondent/State.

5. The learned counsel for the petitioners submits that the petitioners are *bona fide* purchasers of flats / shops. It is submitted that the application was made in view of Section 10 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management & Transfer) Act, 1963 and while preparing the Form -Z, which according to respondent No.2 is forged document, inadvertently the name of the father of respondent No.2 came to be mentioned therein. It is submitted that admittedly the said Form- Z is signed by petitioner No.15. It is submitted that the FIR is filed with ulterior motive and the dispute, if any, between the parties is of civil nature.

6. On the other hand, learned senior advocate for respondent No.2 submits that the act of the petitioners is not that innocent as they are trying to portray. It is submitted that respondent No.2 and other heirs are the owners of flats/shops on the ground floor and the 2<sup>nd</sup> floor of the building in question. It is submitted that without their consent application was made and though they are land owners they were not made party to the application. It is submitted that forged documents were prepared with *mala fide* intention as in the record of rights the name of father of respondent No.2 is there as land owner. It is submitted that the petition may, therefore, be dismissed.

7. Undisputedly, the original landlord had assigned development rights in favour of the petitioner No.15 vide Development Agreement dated 17 June 1991. In pursuance thereof, petitioner No.15 constructed a building and sold the residential premises/shops/galas to various persons, including petitioner Nos.1 to 14 herein. The owners of the premises resolved to form a cooperative housing society and petitioner No.15 was entrusted to complete the process. Petitioner No.15 had submitted Form -Z, a declaration to be given by the builder/developer. The only allegation that the said form mentions the name of the father of respondent No.2. It is not in dispute that the said declaration is signed by petitioner No.15. It is not the case of the respondent No.2 that the petitioner No.15 had forged the signature of her father.

8. In ***Mariam Fasihuddin & Anr. vs. State by Adugodi Police Station and Anr.***<sup>1</sup>, the Apex Court has observed thus:

**23.** *It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.*

**24.** *It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be*

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termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC. It must also be understood that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss. 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.

**25.** The term 'property' employed in Section 420 IPC has a well defined connotation. Every species of valuable right or interest that is subject to ownership and has an exchangeable value - is ordinarily understood as 'property'. It also describes one's exclusive right to possess, use and dispose of a thing. The IPC itself defines the term 'moveable property' as, **"intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth."** Whereas immoveable property is generally understood to mean land, benefits arising out of land and things attached or permanently fastened to the earth.

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**33.** The offence of 'forgery' under Section 468 IPC postulates that whoever commits forgery, intending that the document or electronic document forged, shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Whereas Section 471 IPC states that whoever fraudulently or dishonestly uses as genuine any documents which he knows or has reason to believe it to be a forged document, shall be punished in the same manner as if he had forged such document.

**34.** There are two primary components that need to be fulfilled in order to establish the offence of 'forgery', namely: (i) that the accused has fabricated an instrument; and (ii) it was done with the intention that the forged document would be used for the purpose of cheating. Simply put, the offence of forgery requires the preparation of a false document with the dishonest intention of causing damage or injury."

9. In the instant case, there are no allegations that the petitioners have deceived any person, or induced any person to deliver any property or valuable security. There are no allegations of damage or injury caused to respondent No.2. Resultantly, the allegations in the FIR even if taken at face value do not disclose essential ingredients of '*cheating*' within the meaning of Section 415 of the IPC or '*forgery*' within the meaning of Section 468 of the IPC.

10. Apart from above, according to respondent No.2 herself, she had filed the appeal against the order allowing the application of petitioners for registration of the society. We are told that said appeal is allowed. According to us, the dispute between the parties is essentially of civil nature.

11. The Hon'ble Supreme Court in ***Paramjeet Batra v. State of Uttarakhand & Ors.***<sup>2</sup> has held :-

*"12. While exercising its jurisdiction under Section 482 of the Code of Criminal Procedure the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate*

*to quash the criminal proceedings to prevent abuse of process of the court.”*

12. Considering overall facts and circumstances, in our considered view, this is a fit case to exercise powers under Article 226 of the Constitution of India read with Section 482 of Cr. P. C. to quash the FIR. In the result, following order is passed.

**ORDER**

- (i) Writ Petition is allowed in terms of prayer clause “a”.
- (ii) The C.R. No. 104 of 2023 dated 23 March 2023 registered at Nizampura Police Station, Thane city for the offences punishable under Sections 420, 465, 467, 468 and 471 read with 34 of the I.P.C. is hereby quashed and set aside.
- (iii) The Petition stands disposed of.

**(N.R. BORKAR, J.)**

**(SMT. ANUJA PRABHUDESSAI, J.)**