

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

CRIMINAL APPLICATION NO.721 OF 2014

Jagdish s/o Rameshwar Agrawal
and another ... APPLICANTS

VERSUS

The State of Maharashtra
and others ... RESPONDENTS

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Shri A.R. Devkate, Advocate for applicants
Shri A.V. Deshmukh, A.P.P. for respondent No.1/ State
Shri M.K. Goyanka, Advocate for respondents No.2 & 3
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CORAM: S.S. SHINDE AND
A.I.S. CHEEMA, JJ.

DATED: 22nd July, 2015.

PER COURT :

1. Heard counsel for the applicants – accused, learned A.P.P. for respondent No.1/ State and learned counsel for respondents No.2 and 3 – complainants. The counsel for applicants has submitted that the applicants, respondents No.2 and 3 along with other three partners entered into agreement of partnership and started partnership firm “Agrasen Construction”. Applicant No.1 purchased Plot No.7 in Survey No.123/3 at village Amode, Taluka Shirpur. Applicant No.1 transacted on behalf of

the firm. Shopping Complex "Shri Maharaja Agrasen Shopping Complex" was constructed. Respondent No.3 executed receipt with respondent No.2 and accepted consideration amount of eight shops and it was agreed that for remaining 16 shops, the applicant No.1 and his wife would receive the consideration. Applicants sold various shops by registered sale deeds. According to the counsel, in view of this, it was civil transaction and the respondents No.2 and 3 wrongly filed complaint before the trial Court, which passed orders under Section 156(3) of the Criminal Procedure Code for registration of the offence and investigation. The counsel placed reliance on the judgment of the Supreme Court in the case of **Mohammed Ibrahim & ors. Vs. State of Bihar & anr.** reported in **(2009 8 SCC 751** to submit that, even if in the sale deed the applicants showed themselves as the exclusive owners, it was not forgery. Thus, according to him, the F.I.R. filed needs to be quashed.

2. Against this, counsel for respondents No.2 and 3 submitted that the F.I.R. shows that it was a partnership between the parties, and, the applicant No.1, only because his exclusive name appeared in the property extract, sold off certain shops as appearing from the F.I.R./ complaint, showing himself as exclusive owner and has misappropriated the amount of

consideration. According to the counsel, the applicants have thus, cheated the other partners and brought about forged documents. The counsel has raised suspicion regarding the document Exhibit 'C' filed with the petition also.

3. We have gone through the judgment relied on by the learned counsel for the applicants. Apart from the allegations of executing the sale deeds posing himself to be the exclusive owner by the accused, there are also other allegations in the F.I.R. The matter is at the stage of F.I.R. and investigation. It would not be appropriate to interfere in the matter at this stage looking to the rival contentions. The Judicial Magistrate, First Class, while passing orders under Section 156(3) of the Code of Criminal Procedure, has found prima facie substance for commission of cognizable offence. We do not wish to interfere at this stage.

4. The application is rejected.

(A.I.S. CHEEMA, J.)

(S.S. SHINDE, J.)