IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.576 OF 2015

Shaikh Haroon s/o Haji Noor Mohammad … APPLICANT

VERSUS

The State of Maharashtra & anr. … RESPONDENTS

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Mr. S.S. Kazi, Advocate for the applicant
Mr. A.V. Deshmukh, A.P.P. for respondent No.1/State
Mr. P.F. Patni, Advocate for respondent No.2

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CORAM : S.S. SHINDE AND
A.I.S. CHEEMA, JJ.

DATED : 10th August, 2015

PER COURT :

1. Heard learned counsel for the applicant, learned A.P.P. for State and learned counsel appearing for the respondent No.2, finally.

2. The learned counsel for the applicant has submitted that the application has been filed to quash the F.I.R. – Crime No.I-08/2015, dated 17.1.2015, registered at Sillod Police Station in view of orders passed by the Judicial Magistrate, First Class in complaint filed by respondent No.2 (original complainant).

3. The F.I.R. has been filed claiming that the applicant – accused, on 10.11.2000, behind the back of the complainant, put forth one Lalitabai Suresh Makasare, posing her as Vimalbai Ratanlal Bora, the mother of complainant, and prepared forged power of attorney and false record with reference to Plot Nos.32, 33 and 34. Regarding this, on 28.5.2002, as per orders under section 156(3) of the Code of Criminal Procedure, M-Case No.1/2002 was registered under /Sections 420, 465, 468, 471 read with Section 34 of the Indian Penal Code (at the instance of Vimalbai Bora), which matter is pending. The F.I.R. claims that, on 16.6.2012, the accused, on the strength of that false power of attorney, entered into agreement of sale of Plot No.33 of the complainant with one Jijabai Ambhore and on 10.12.2014, he

has brought about sale deed of that plot to grab the property of complainant and to cheat him. On the basis of said power of attorney, he has got his name entered in the plot and without letting complainant know, he has sold of the plot on 10.12.2014 and thus, the F.I.R.

4. The criminal application claims that, the mother of complainant filed civil suit with reference to the same general power of attorney and the suit came to be dismissed on 8.12.2011. The general power of attorney was registered and the accused was entitled to transact the property. The present complaint is second complaint for the same subject matter and thus, the complaint was not maintainable and the F.I.R. should be quashed. The learned counsel for the applicant – accused relied on the case of **Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation & anr**. reported in **AIR 2013 SC 3794**.

5. The learned counsel for the original complainant referred to the affidavit-in-reply filed and the additional affidavit-

in-reply filed by the complainant, to submit that the accused prepared forged documents and treating them as genuine, was transacting the properties of the complainant and his mother and regarding forgery, the earlier complaint was filed. Regarding the judgment in the civil suit, Regular Civil Appeal No.3/2012 is pending. The counsel submitted that, regarding the forged document, report of handwriting expert has been received which shows that there was forgery.

6. Going through the material available as well as the impugned F.I.R. registered on 17.1.2015, we find that there is no substance in the arguments of the learned counsel for the applicant – accused that the present F.I.R. would be required to be treated as second F.I.R. The contents of the impugned F.I.R. itself show that it refers to the subsequent acts after the earlier criminal case of 2002. The present F.I.R. refers to the agreement of sale dated 10.6.2012 and sale deed dated 10.12.2014 and claims as to how the plot of complainant has been transacted out and out and offence of cheating and forgery and again using as genuine the forged document is alleged. The

F.I.R. has been registered under Sections 420, 468 and 471 of the Indian Penal Code. In view of the facts of the present matter, we are not convinced that the present F.I.R. should be treated as second F.I.R. It relates to transactions of 2012 and 2014 and the complainant claims that these transactions relate to his plot. In short, what is claimed is that, on the basis of forged power of attorney, regarding which forgery earlier complaint was filed, another offence has been committed. The F.I.R. prima facie shows ingredients of the offence. There is no substance in the criminal application.

7. The criminal application is rejected.

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

fmp/-