

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

CRIMINAL APPLICATION NO. 2204 OF 2015.

UMESH ANIL NYATI & ANR.
VERSUS
THE STATE OF MAHARASHTRA & ANR

Appearance =>

Mr. Bhausaheb S. Deshmukh, Advocate for the Applicants.

Mrs. V.A. Shinde, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 7th May, 2015.

Per Court :-

Present Criminal Application is filed by the Applicants for grant of anticipatory bail, since they are apprehending their arrest in connection with CR No.24/2015 registered with Police Station, Bhadgaon, District - Jalgaon for the offences punishable under Section.s.420 read with 34 of the Indian Penal Code.

[2] Heard Mr. Bhausaheb S. Deshmukh, learned counsel for the Applicants and Mrs. V.A. Shinde, Additional Public Prosecutor for the State of Maharashtra.

Mrs. V.A. Shinde, learned Additional Public Prosecutor argued the matter on the instructions of the Investigating Officer, who is personally present in the court hall.

[3] First Information Report is lodged by one Subhash Dagadu Marwadi against the present Applicants. First Information Report shows that, present Applicants floated certain scheme for selling the plots. Accordingly, an agreement was registered with the present Applicants. In pursuance to the said agreement, first informant has paid certain amount and has obtained the receipt/s. First Information Report further reveals that since sale deed was not executed, first informant demanded the amount back, from the present Applicants and, therefore, cheques were given by the present Applicants to the first informant, which when deposited for encashment with his banker, were dishonoured by the banker of the present Applicants. Therefore, the present First Information Report was lodged.

[4] Mr. Bhausahab S. Deshmukh, learned counsel for the Applicants pointed out that after dishonour of the negotiable instrument / cheque, the First Informant has filed proceedings under Section 138 of the Negotiable Instruments Act, 1881 bearing S.T.C. No.745/2014 in the court of the Judicial Magistrate, F.C., Pachora, District – Jalgaon. Said complaint was filed on 29th December, 2014. The Verification statement of the Complainant – Subhash Dagadu Marwadi was taken on 4th February, 2014.

Worth to note that, said complaint was filed not only for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 but also under Section 420 of the Indian Penal Code. However, the learned Magistrate has issued process only for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 on 29th January, 2015.

[5] Therefore, the present First Information Report for the offences punishable under Section 420 read with 34 of the Indian Penal Code is filed on 5th March, 2015. That clearly shows that, the first informant wants to convert the civil dispute into the criminal one, which is not permissible.

[6] In that view of the matter, present Application needs to be allowed. Hence, I pass the following order :-

ORDER

(i) Criminal Application is allowed.

(ii) In the event of arrest, Applicant No.1 – Umesh Anil Nyati and Applicant No.2 – Vipin Anil Nyati shall be released on anticipatory bail on they executing P.R. Bond of Rs. 25,000/- [Rs. Twenty Five Thousand.] each with one solvent surety in the like amount, in connection with CR No.24/2015 registered with Police Station, Bhadgaon, District - Jalgaon for the offences punishable under Section.s.420 read with 34 of the Indian Penal Code.

(iii) With this Criminal Application is allowed and same is disposed of accordingly.

(V.M. DESHPANDE, J.)