

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

CRIMINAL APPLICATION NO.3491/2015

Gopaldas s/o Harilal Agrawal .. APPLICANT
Versus
The State of Maharashtra & Anr. .. RESPONDENTS
...

Shri A.M.Gholap, Advocate for applicant
Smt.S.G.Chincholkar ,APP for respondent State
Shri M.V.Navandar,Adv.for complainant to assist APP
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CRIMINAL APPLICATION NO.3492/2015

Shashikala W/o Gopaldas Agrawal .. APPLICANT
Versus
The State of Maharashtra & Anr. .. RESPONDENTS
...

Shri A.M.Gholap, Advocate for applicant
Smt.S.G.Chincholkar ,APP for respondent State
Shri M.V.Navandar,Adv.for complainant to assist APP
...

CRIMINAL APPLICATION NO.3548/2015

1] Sanjay S/o Kisan Tayade
2] Dnyaneshwar S/o Devidas Vispute .. APPLICANTS
Versus
The State of Maharashtra .. RESPONDENT
...

Shri P.K.Wagh h/f Shri A.D.Aghav, Advocate for applicant
Smt.S.G.Chincholkar ,APP for respondent State
Shri M.V.Navandar,Adv.for complainant to assist APP
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CORAM : V.M.DESHPANDE,J.
DATED : 4TH AUGUST, 2015

ORDER :-

These three applications arise out of Crime No.103/15 registered with Jamner police station, Dist.Jalgaon for offences punishable u/s 420, 465, 468, 471, 120-B of I.P.C., therefore, these three applications can be disposed of by this common order.

2] Criminal Application No.3491/15 is filed by Gopaldas s/o Harilal Agrawal; Criminal Application No.3492/15 is filed by Shashikala w/o Gopaldas Agrawal, they are husband and wife. Criminal Application No.3548/15 is filed by two applicants viz. Sanjay Tayade and Dnyaneshwar Vispute.

3] I have heard Shriu A.M.Gholap, learned counsel for the applicants in Criminal Application Nos.3491 and 3492 of 2015. I have heard Shri P.K.Wagh, learned counsel for applicants in Criminal Application No.3548/15. Prayer for anticipatory bail made in these applications are opposed by learned A.P.P. Smt.Chincholkar. Prayer for anticipatory bail is also opposed by Shri M.V.Navandar, learned counsel for the first informant Kapil Ladda. They are also heard extensively.

4] There is an agricultural field having Gat No.136 situated at village Mengaon. According to the learned counsel for the first informant, a long standing civil dispute is going on in respect of the ownership of the said agricultural field. Presently, the Court is not

concerned with the said ownership dispute. Further, according to the learned counsel for the first informant, the the said Civil Suit no.21/03 filed mother of applicant Shashikant for partition claiming the separate possession of 1/3rd share is dismissed for want of prosecution and the application for restoration of the said suit is pending.

5] On 10/6/2015, the first informant Kapil Ladda lodged a report with police station. The FIR discloses that the first informant is having a hotel known as hotel "Sara". Thus, it is clear that the first informant is not a rustic person and is a businessman. The FIR further discloses that he manages all financial affairs of his family. The FIR further discloses that one Pradip Bhaulal Mahajan came to him alongwith one Nilesh Agrawal. It was disclosed to him that Gat No.136 is owned by Nilesh Agrawal. A proposal was made to him for the sale transaction of the said immovable property. Therefore, the first informant took 7/12 extract of the said agricultural field from them. According to the FIR, on the said 7/12 extract, names of applicant Shashikala Agrawal and name of one Shridatta Govardhan Agrawal was also appearing. This Shridatta is brother of Shashikala. According to the FIR, Nilesh Agrawal then brought applicant Gopaldas and Shashikala to him and they also conveyed to the first informant that due to the financial crisis, they are intending to sell Gat No.136.

According to the FIR, two sale deeds were executed by Nilesh Agrawal in favour of Kapil Ladda the first informant. The first sale deed is dated 22/1/2013 whereas the second sale deed is dated 11/3/2013.

It is to be mentioned that the executant Nilesh Agrawal is son

of applicants Gopaldas and Shashikala.

According to the FIR, thereafter, in 2015, one person came to his hotel who disclosed that he belongs to village Shendurni. That time, first informant informed that his agricultural property is situated near village Shendurni which is purchased by him from Nilesh Agrawal, that time according to the FIR, the said unknown person disclosed that Nilesh Agrawal is a fraudulent person and he indulges into cheating of various persons, therefore, first informant went to Gat No.136, that time it was revealed to him that the property is purchased by one Anita Agrawal. Thereafter, he rushed to the Gram Panchayat office and shown the 7/12 extracts given to him by Nilesh Agrawal. The Talathi Mr.Naik disputed the authenticity of the said 7/12 extract, therefore, he lodged the complaint.

6] In so far as applicants Sanjay Tayade and Dnyaneshwar vispute are concerned, they are witnesses to the second sale deed dated 11/3/2013. There is nothing available either in the FIR or with the investigation papers that these two persons had at any point of time shared intention with executant Nilesh Agrawal. They are merely the witnesses to the sale deed dated 11/3/2013. In that view of the matter, prima facie, they cannot be held responsible for any cheating as alleged by first informant especially when there is no material with these two persons sharing intention with executant Nilesh Agrawal.

7] In so far as the applicants Gopaldas and Shashikala are concerned, according to the FIR, amount of Rs.two lakh was given to them on 22/1/2013 and amount of Rs.2 lakh ten thousand was given to them on 11/3/2013. According to the learned counsel for the first informant, these two persons have thus accepted the amount. The

learned APP submitted that there is a statement of Vishal Rathod who is manager of hotel Sara owned by first informant. According to learned APP from this statement, it is clear that applicants Gopaldas and Shashikala have accepted amount from first informant Kapil Ladda and therefore, she submitted that the application of these two applicants need to be rejected.

8] The sale deeds dated 22/1/2013 and 11/3/13 are placed on record. These two sale deeds are duly registered with the office of Sub Registrar, Jamner. These two sale deeds have specific recitals that the amount is received by Nilesh Agrawal in cash.

When there is a recital in a registered document about the receipt of the cash amount by executant from the first informant, much importance cannot be attached to the statement of this Vishal Rathod since the said statement is contrary to the documentary evidence. Further witness Vishal Rathod is manager working at hotel Sara. Hotel Sara is owned by first informant Kapil Ladda. Thus it is clear that this witness is under the thumb of first informant Kapil Ladda and is ready to make any statement, therefore, necessarily his statement to the extent that the amount was accepted by applicants Gopaldas and Shashikala is to be kept aside and cannot have any importance.

9] It is not the case of even the first informant that this applicant Gopaldas is owner or having any share in the property. According to the learned counsel for first informant, property is originally owned by father of Shashikala.

10] If according to the first informant, the sale deeds are executed in 2013, it is hard to believe that from execution of sale deed till May

2015 the first informant will not take any steps in respect of the property which he has purchased. Further, the person who according to the first informant disclosed to him that Nilesh is fraud star, his identity is not established. Therefore, the delay in lodging the FIR assumes importance. Further, it is always expected from bonafide purchaser of immovable property to verify the title deeds since the extract of 7/12 is not a title document.

11] The aforesaid survey of the prosecution case clearly established that the custodial presence of these four applicants is not at all required. In that view of the matter, I pass following order :

ORDER

A] Criminal application Nos.3491/15, 3492/15 and 3548/15 are allowed. Applicants Gopaldas Harilal Agrawal, Shashikala Gopaldas Agrawal, Sanjay S/o Kisan Tayade and Dnyaneshwar S/o Devidas Vispute be released on anticipatory bail in the event of their arrest in connection Crime No.103/15 registered with Jamner police station, Dist.Jalgaon for offences punishable u/s 420, 465, 468, 471, 120-B of I.P.C. on they executing PR bond of Rs.5000/- each with one solvent surety in the like amount by each of them.

B] With this, applications are allowed and disposed of.

(V.M.DESHPANDE,J.)

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