

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 706 OF 2014

Sandeep s/o. Padmakarrao Unhale
and another

....Applicants.

Versus

The State of Maharashtra and
another

....Respondents.

Mr. Amit S. Deshpande, Advocate for applicants.

Mr. V.D. Godbharle, APP for State/respondent No. 1.

Mr. R.N. Dhorde, Senior Counsel i/b. Mr. V.R. Dhorde, Advocate
for respondent No. 2.

WITH
CRIMINAL APPLICATION NO. 4194 OF 2014

Dilip s/o. Padmakarrao Unhale

....Applicant.

Versus

The State of Maharashtra and
another

....Respondents.

Mr. Vaibhav Deshmukh, Advocate for applicant.

Mr. V.D. Godbharle, APP for State/respondent No. 1.

Mr. R.N. Dhorde, Senior Counsel i/b. Mr. V.R. Dhorde, Advocate
for respondent No. 2.

**CORAM : T.V. NALAWADE &
SMT. I.K. JAIN, JJ.**
DATED : 1st April, 2015.

ORDER :

1. Both the proceedings are filed for quashing of the
F.I.R. bearing C.R. No. 110/2013 registered with Hingoli City

Police Station, Tahsil and District Hingoli for the offence punishable under sections 420, 468, 504 and 34 of Indian Penal Code. Both the sides are heard.

2. The crime is registered on the basis of report given by one Smt. Dipali Narsikar. Her father Padmakar Dattatraya Unhale was working in Agricultural Department and from his income, he had purchased property like agricultural land, house etc. in the names of his wife, sons. During his lifetime, Padmakar had not partitioned the property amongst his issues and he has not left behind any will. The dispute started after his death. The complainant has filed Civil Suit No. 310/2012 for relief of partition in respect of this property. During pendency of the proceeding, the complainant got information that behind her back, even when the suit was pending, one plot, which was the suit property, was sold by her mother and brothers to the persons like Sanjay Sharma and Raghu Sharma for consideration of Rs. 18.50 lakh. False affidavit was filed for execution of sale deed which was to the effect that no suit was pending in respect of this property and no other person had right of ownership in respect of the property. She tried to make inquiry with mother and brothers, but they gave evasive answers. The sale deed was executed on 1.8.2013 and she gave report on 12.8.2013.

3. Copy of plaint of Special Civil Suit No. 231/2011 is produced and it shows that plot No. 10 from Survey No. 71 situated at Hingoli is included as suit property. Copy of sale deed executed in favour of mother of the complainant dated 22.2.1979 is produced. Occupation of mother was shown as household and the property was purchased in her name. It appears that relief of temporary injunction came to be given by the Court, though on 5.8.2013. Copy of agreement made by accused shows that it was made on 17.8.2012. In this document, the value of the property is shown as Rs. 46 lakh, but in the sale deed, value is shown as Rs. 18.50 lakh.

4. Second proceeding is filed by Dilip Unhale, brother of the complainant. On sale deed, there is signature of Sandeep Unhale, one brother and on other document like agreement of sale dated 17.8.2012, there is signature of Dilip Unhale, as a person giving consent. Sandeep had also given consent on the agreement.

5. The learned counsel for the applicants submitted that it is civil dispute and prosecution is not warranted in such case. He cited some reported cases on this point, which are as

under :-

**(i) AIR 2000 SUPREME COURT 2341
[Hridaya Ranjan Pd. Verma and Ors. Vs.
State of Bihar and Anr.],**

**(ii) 2014 ALL MR (Cri) 283 [Kamalkishor s/o.
Nanasaheb Kadam & Ors. Vs. The State of
Maharashtra & Ors.].**

The facts and circumstances of each and every cases are always different. The same sets of facts can constitute civil wrong as well as criminal wrong. The aforesaid circumstances show that the applicants, accused persons have done the aforesaid act intentionally. The circumstance like the mother of the complainant had no source of income and the property was purchased during lifetime of her husband is there. There is one more circumstance like the two brothers had given consent on the agreement of sale. There is third circumstance like as against the consideration of more than Rs. 46 lakh shown in the agreement, the amount of Rs. 18.50 lakh is shown in the sale deed. They show that the accused want to deprive the complainant of her rights to get share in the property and one way by doing such act, they are misappropriating the property to which the complainant is entitled. So, it cannot be said that they have not committed any offence. If suit was pending and it was a fit case for granting relief of temporary injunction, it was

necessary for the accused to take the permission of the Court as provided under section 52 of Transfer of Property Act, but, they avoided to do so and they took time by making submissions like matter can be settled through mediator and in the meantime, they executed the sale deed. In view of these circumstances, this Court holds that power under section 482 of Cr.P.C. cannot be used in favour of applicants.

6. In the result, both the applications stand dismissed.

[SMT. I.K. JAIN, J.]

[T.V. NALAWADE, J.]

ssc/