

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

Criminal Writ Petition No.1528 of 2014

Shaikh Ayyub s/o Shaikh Miya Khan
And Others.

.. Petitioners.

Versus

The State of Maharashtra
And Another.

.. Respondents.

Shri. Zia Ul Mustafa, Advocate, for petitioners.

Shri. K.S. Patil, Additional Public Prosecutor, for
respondent No.1.

Shri. Y.V. Kakade, Advocate, for respondent No.2.

**CORAM: T.V. NALWADE
INDIRA K. JAIN, JJ.**

DATE : 29th APRIL 2015

ORDER:

1) The petition is filed for quashing of FIR of CR No.216/2014 registered in Bidkin Police Station, Tahsil Paithan, District Aurangabad for offences punishable under sections 463, 464, 466, 468, 469, 470, 471, 420, 34 etc of the Indian Penal Code. Both sides are heard.

2) The crime is registered on the basis of report given by one Rajendra Dharpale, respondent No.2 of the present proceeding. He has contended that on 6-10-1997 he purchased plot Nos.18 to 22 from land Gat No.1 situated at Bharatnagar, Bidkin from the owner Khaled Amar Hilabi. He has contended that possession of those plots was given to him by the original owner and the total area of these plots was around 3000 square feet. He has contended that as he was busy in his practice as Advocate and cultivation of his land, he had not used these plots for making construction. He has contended that in October 2013 when he decided to make some construction and went to the plots, persons like Shaikh Ayub Shaikh Miya Khan, Shaikh Amil Shaikh Raheman, Rehanabee Shaikh Raheman Shaikh Abdul Raheman tried to obstruct him. He has contended that those persons had obtained permission for construction from village panchayat.

3) It is the case of the complainant that he approached the authority, made enquiry and obtained information under Right to Information Act and it was to the effect that no such permission was given. He has

contended that he has filed Regular Civil Suit No.326 of 2012 against the aforesaid persons for relief of injunction and temporary injunction is given in his favour by the Civil Court.

4) It is the case of the complainant that due to aforesaid facts and circumstances he gave report against the aforesaid persons and the crime came to be registered for the offences punishable under section 420, 468, 471, 34 of the Indian Penal Code at CR No.24/2014 against the aforesaid persons. The aforesaid persons were arrested and released on bail.

5) It is the case of the complainant that in view of his application made to the village panchayat on 6-5-2013 the village panchayat passed Resolution No.16 and decided to make entry of the name of the complainant in the assessment record of the village panchayat in respect of the aforesaid plots. It is contended that it was noticed that in past on the basis of some notarized documents, which were not registered conveyance documents, entries were made in favour of Shaikh Ayub Shaikh Miya and

Rehanebee Shaikh Abdul Rahim and those entries were cancelled as the complainant made application.

6) It is the case of the complainant that the aforesaid steps were taken by him and entries made in favour of others subsequent to the date of purchase made by him were cancelled. The village panchayat made one more resolution on 20-9-2013 and cancelled the entry made in his favour. It is contended that the village panchayat then made entry in favour of present applicants on the basis of document of sale deed produced by them. He has contended that when he had purchased the property from original owner in the year 1997, it was not possible to sell the same property and so false record is created by these persons and the record is against his interests. In view of the subsequent development, he gave the report and Crime No.216/2014 came to be registered.

7) The learned counsel for the applicants submitted that the widow of Khaled Hilabi had executed some documents which were notarized in favour of present applicants and then sale deed also came to be

executed and so no offence as such is committed by the applicants.

8) It is not disputed that sale deed was executed in favour of the complainant in the year 1997 by Khaled Amar Hilabi in respect of those plots viz. plot Nos.18 to 22 and the total area of these plots was around 3000 square feet. Along with the sale deed, hand sketch map showing the location of the plots was annexed. It appears that on 22-3-2012 the widow of Khaled namely Smt. Nasim Khaled Hilabi executed a document titled as sale deed in favour of Shaikh Sharif Shaikh Bashir on general stamp of Rs.100/- and this document was notarized and that was in respect of plot Nos.18 to 22. It appears that one more document titled as agreement was executed on a stamp of Rs.100/- on 22-3-2012 by Shaikh Sharif Shaikh Bashir in favour of Rehanabee Shaikh Abdul Raheman and that was in respect of plot Nos.20, 22 and eastern portion of plot No.19. The total area of this portion was around 1200 square feet. This document was also notarized. On 22-3-2012 one more agreement was executed by Shaikh Sharif Shaikh Bashir in favour of Shaikh Ayyub Shaikh

Miyan Khan on stamp of Rs.100/- and that was in respect of plot Nos.18, 21 and western portion of plot No.19. The total area of this portion was 1200 square feet. Thus, an attempt was made to show that these plots were sold by widow of Khaled Hilabi in favour of Shaikh Sharif Shaikh Bashir. Shaikh Sharif Shaikh Bashir had, in turn, made agreements in favour of other person to sell this property. By such document or even by registered sale deed, it was not possible to transfer any interest or title in favour of anybody including Shaikh Sharif Shaikh Bashir as nothing was left in respect of those plots for the widow of Khaled Hilabi.

9) It appears that on 18-11-2013 sale deed was executed by Nasim, widow of Khaled Hilabi in favour of Shaikh Ayyub Shaikh Miyan and Rehanabee Shaikh Abdul Raheman in respect of 2.75 gunthas portion from land Gat No.1. Though plots are not specifically mentioned it can be said that an attempt was made to show that portion covered by the plots purchased by the complainant was again sold by the widow of Khaled in favour of Shaikh Ayyub Shaikh Miyan and Rehanabee Shaikh Abdul

Raheman. It can be said that on that date there was document of sale deed in favour of the complainant and further the village panchayat had also entered the name of complainant in assessment record. These circumstances are sufficient to infer that the applicants knew well that there was sale deed in favour of the complainant and there was nothing left with the widow of Khaled Hilabi but they created the record of the aforesaid nature in their favour.

10) In view of the aforesaid record, there is no need to discuss the resolutions made by the village panchayat. The entries in the assessment record cannot confer any title in favour of anybody much-less the persons like present applicants. Thus there is sufficient material to make out offences for which the crime is registered.

11) Learned counsel for the applicants placed reliance on two reported cases like (1) **AIR 2001 SC 2637 (T.T. Antony v. State of Kerala)** and (2) **(2010) 12 SCC 254 (Babubhai v. State of Gujarat)**. In these two cases the Apex Court has laid down that two F.I.R.s are not possible

in respect of the same offence. There cannot be any dispute over the propositions made by the Apex Court in these two cases. The relevant material is discussed by this Court. The second FIR came to be given after commission of one more offence and it cannot be said that there is second FIR in respect of the same crime.

12) There are no merits in the present proceedings. The writ petition stands dismissed.

Sd/-
(INDIRA K. JAIN, J.)

Sd/-
(T.V. NALAWADE, J.)

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