

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4236 OF 2016

1. Sau. Padma Rajendra Agrawal,
Age : 52 years,
Occu.: Agriculture & Business,
2. Rajendra Mohanlal Agrawal,
Age : 53 years,
Occu.: Agriculture & Business,
3. Kshitij Rajendra Agrawal,
Age : 25 years,
Occu.: Agriculture & Business,

All R/o.: 1342, Lane No.5,
Dhule, Tal & Dist. Dhule

..APPLICANTS

VERSUS

1. The State of Maharashtra,
2. Maharashtra Solvent Extraction
Pvt. Ltd., E-132, MIDC Avdhan,
Dhule, Tal & Dist. Dhule
Through its Director
Sanjay Kashinath Agrawal,
Age : 55 years,
Occu.: Business & Agril,
R/o: 'Gauri Bhavan', Ramwadi,
Malegaon Road, Dhule,
Tal. & Dist. Dhule

..RESPONDENTS

Mr. P.R. Katneshwarkar, Advocate holding for
Mr. M.H. Patil, Advocate for the applicants
Mr. K.S. Patil, A.P.P. for the respondent/State
Mr. P.M. Shah, Senior Advocate instructed by
Mr. Amol S. Sawant, Advocate for respondent no.2

**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.**

DATE : 15th September, 2016

JUDGMENT : (PER : SANGITRAO S. PATIL, J.):

The applicants have prayed for quashment of the First Information Report (for short, "F.I.R.") on the basis of which Crime No.127 of 2016 has been registered against them for the offences punishable under Sections 420, 120-B, 468 read with Section 34 of the Indian Penal Code (for short, "I.P.C."), in the City Police Station, Dhule, on 10.06.2016.

2. The facts of the case, as disclosed from the F.I.R., are that respondent no.2 viz. Maharashtra Solvent Extraction Pvt. Ltd., is running its industry in Plot No.E-132, M.I.D.C. Avdhan, Taluka and District Dhule. The land bearing Block No.73/1D/B, admeasuring 91 R (hereinafter referred to as "the disputed land") is adjacent to the above numbered industrial plot of respondent no.2. According to the informant viz. Sanjay Kashinath Agrawal, who is the director of respondent no.2, he had family relations with the applicants. He got acquainted with one Ajit Shrivijay Gokhale resident

of Nashik, Bharati Madhav Bapat and Madhav Janardhan Bapat, both residents of Dhule and Nandkishor Avadhut Aagharkar, resident of Nashik through the applicants. On 22.05.2013, applicant nos.2 and 3 approached the informant at his house and insisted upon him for purchasing the disputed land on the say that it was adjacent to the industrial plot of respondent no.2. On being questioned by him as to how they were authorised to sell the disputed land, applicant nos.2 and 3 showed him a Memorandum of Agreement (MOU) dated 21.05.2013 executed by the owners of the disputed land i.e. Ajit Gokhale and Bharati Bapat in favour of applicant no.1, who is the wife of applicant no.2 and mother of applicant no.3, whereunder the disputed land was agreed to be sold to applicant no.1 by the owners thereof for a consideration of Rs.30,00,000/-. However, there was a charge of Shri Samarth Patpedhi, Dhule on the disputed land as seen from the 7/12 extract. Therefore, the informant refused to purchase the said plot.

3. Then, on 26.05.2013 the applicants as well as Ajit Gokhale, Bharati Bapat and Madhav Bapat met the informant at his house and at that time Ajit Gokhale,

Bharati Bapat and Madhav Bapat told the informant that they had agreed to sell the disputed land to applicant no.1. However, she was not in a position to arrange for the entire price of the disputed land and, therefore, had proposed to sell the disputed land to the informant at a cheaper price. Since, the applicants and the above named owners of the disputed land and Madhav Bapat insisted upon the informant to purchase the disputed land, he succumbed to their misrepresentation and decided to purchase the disputed land for a consideration of Rs.85,00,000/-.

4. Accordingly, applicant no.1 executed the agreement of sale in respect of the disputed land in favour of respondent no.2 on 30.05.2013 after receiving the amount of Rs.50,00,000/- by cheque No.549064 and Rs.51,000/- in cash. Applicant no.1 got that cheque encashed on 30.05.2013 itself. Applicant no.1 repaid half of the loan amount of Shri Samarth Patpedhi, Dhule and obtained the certificate to that effect. She further informed that she had obtained No Objection Certificate from Shri Ganpule Datta Mandir Sansthan, Dhule by repaying the loan of that institution.

5. The informant repeatedly requested the applicants as well as the registered owners of the disputed land to execute the sale deed in favour of respondent no.2. However, they simply assured him that they would execute sale deed in favour of respondent no.2 only and not to any other person and in the event it was sold out to some other person, the amount received from the informant would be repaid to the informant with interest.

6. Relying on that assurance, the informant awaited for some days, but he came to know that the applicants and the registered owners of the disputed land were intending to sell it to some other persons. He, therefore, took out the 7/12 extract of the disputed land on 02.02.2016. At that time, he came to know that Ajit Gokhale and Bharati Bapat had sold out the disputed land to one Nandkishor Adharkar for a consideration of Rs.20,00,000/- only on 05.10.2015. He realised that though the disputed land was worth of Rs.1 Crore as per the market value, it was sold out to Nandkishor Adharkar for Rs.20,00,000/- only with a intent to deceive him.

7. The informant then met to Nandkishor and asked as to how could he purchase the disputed land whereupon, he told that the amount of Rs.50,51,000/- that was paid by the informant to applicant no.1 was with her only.

8. As suggested by Nandkishor, he met Ajit Gokhale, Bharati Bapat and Madhav Bapat who also informed that the money paid by the informant was returned to applicant no.1. Thereafter, the informant met the applicants whereon they informed that Ajit Gokhale, Bharati Bapat and Madhav Bapat had cancelled the agreement of sale dated 22.07.2013 executed in favour of Shri Ganpule Datta Mandir Sansthan, Dhule, after withdrawing of Rs.15,11,000/- from the account of applicant no.1. Moreover, the applicants have paid of Rs.20,00,000/- to Ajit Gokhale and further repaid the loan of Shri Samarth Patpedhi, Dhule. However, Ajit Gokhale and Bharati Bapat, on their own, sold out the disputed land to Nandkishor Adharkar. The applicants informed that they did not have the right to execute the sale deed of the disputed land in favour of the informant. When the informant asked for the refund of

the amount of Rs.50,51,000/- from applicant nos.1 and 2, they asked him to recover that amount from Ajit Gokhale and Bharati Bapat. They further refused to pay that amount to the informant and challenged him to do whatever he wanted to do.

9. The informant realised that the applicants, Ajit Gokhale, Bharati Bapat and Madhav Bapat had the intention to cheat him since inception and therefore, they induced him to part with the amount of Rs.50,51,000/- on the false pretext of selling the disputed land to respondent no.2. He further realised that though the disputed land was worth of Rs.1 Crore, it has been shown to have been sold out to Nandkishor Adharkar for a price of Rs.20,00,000/- only and that the said transaction was also executed with an intent to deceive him. He, therefore, lodged a report against all the above-named persons on the basis of which the above numbered crime came to be registered against them for the above mentioned offences.

10. The learned counsel for the applicants submits that the dispute subject matter of the F.I.R. is purely

of civil nature. No criminal element is involved therein. He submits that as seen from the agreement of sale dated 30.05.2013, applicant no.1 had made it clear that whatever rights she had in the disputed land acquired on the basis of the MOU dated 21.05.2013, were proposed to be transferred by her to respondent no.2 by executing the agreement of sale dated 30.05.2013. He submits that applicant no.1 did not suppress any fact and had no intention at all to deceive respondent no.2. He submits that, in fact, the original owners of the disputed land have cheated applicant no.1 by selling the disputed land to Nandkishor Aagharkar, after executing MOU in her favour. Therefore, she has filed a Special Civil Suit No.26 of 2016 for Specific Performance of MOU and for cancellation of the sale deed dated 05.10.2015 registered in favour of Nandkishor Aagharkar. She further lodged a report on 13.02.2016 against the original owners of the disputed land viz. Ajit Gokhale and Bharati Bapat as well as the purchaser Nandkishor Aagharkar, for the offences punishable under Sections 420, 120-B, 468 read with Section 34 of the I.P.C. He, further, submits that respondent no.2 also has filed Special Civil Suit No. 57 of 2016 through the informant

in the Civil Court at Dhule against the present applicants, the original owners, one Madhav Bapat and the purchaser Nandkishor Aagharkar for getting it declared that the sale deed dated 05.10.2015 is sham and bogus and for specific performance of agreement of sale dated 05.10.2013 in respect of the disputed land in favour of respondent no.2. In the circumstances, he submits that the F.I.R. lodged against the applicants for the above mentioned offences, may be quashed and set aside.

11. On the other hand, the learned Senior Advocate for respondent no.2 submits that there was criminal conspiracy amongst the applicants and the original owners of the disputed land to cheat respondent no.2 by inducing the informant to part with the huge amount of Rs.50,51,000/- on the false pretext of selling the disputed land to respondent no.2. All of them had insisted upon the informant to purchase the disputed land on the say that it was adjacent to the industrial plot of respondent no.2. The MOU was executed by the original owners in favour of applicant no.1 on 21.05.2013 and immediately after about 9 days the

original owners and the applicants induced the informant to enter into the proposed sale transaction of the disputed land and pay the amount of Rs.50,51,000/-. He, further, submits that though the disputed land was proposed to be sold to respondent no.2 for a consideration of Rs.85,00,000/- on 30.05.2013, the said land is shown to have been sold out to Nandkishor Aagharkhar on 05.10.2015, i.e. after about 2 ½ years, for a consideration of Rs.20,00,000/- only. According to him, these facts and circumstances are sufficient to show the criminal conspiracy to cheat respondent no.2. The sale deed is sham and bogus and has been prepared with an intention to dupe respondent no.2 and as such, the purchaser viz. Nandkishor Aagharkhar also is a member of the conspiracy to cheat respondent no.2. He submits that the F.I.R. is being investigated by the police in order to dig out the truth. It is not desirable to quash the F.I.R. and hamper the investigation. He submits that though respondent no.2 has filed a Civil Suit in respect of the disputed land, the facts contained in the F.I.R. prima facie show that the transaction subject matter thereof is not purely of a civil nature, but it is tainted with the criminality. He, therefore, prays that

the criminal application may be rejected.

12. The learned A.P.P. appearing for respondent no.1 also supports the case of respondent no.2 and prays that the Criminal Application may be rejected.

13. At the stage of investigation into the crime, the contents of the F.I.R. coupled with the documents annexed thereto, only would be material for being considered in order to see whether the ingredients of any offences are disclosed therefrom or otherwise. The defence of the proposed accused cannot be considered at this stage. A roving inquiry into the facts and circumstances of the case also is not expected at this stage. It is well settled that only because civil remedy is available, there is no bar for initiating the criminal proceedings against the wrong-doers if the ingredients of certain offences also are prima facie disclosed from the facts of the case.

14. In the present case, the informant has specifically stated in the F.I.R. that the original owners of the disputed land and the applicants insisted him to agree to purchase the disputed land and thereby

induced him to part with the amount of Rs.50,51,000/-.

He states that applicant no.1 being not the owner of the disputed land, he was not inclined to purchase the same.

However, she showed a MOU dated 21.05.2013 executed by the original owners of the disputed land in her favour, she assured to keep the original owners present in the office of the Sub-Registrar for executing the sale deed.

She made him to believe that she is in a position to transfer the disputed land to him. The F.I.R. further contains that applicant nos.2 and 3 as well as the original owners also met him at his house on 26.05.2013 and at that time the original owners had told the informant that applicant no.1 was not having sufficient funds and, therefore, she was selling the disputed land to respondent no.2 at a cheaper price. The agreement of sale dated 30.05.2013 contains that applicant no.1 would arrange to get executed and registered the sale deed in respect of the disputed land in favour of respondent no.2 from the original owners Bharati Bapat and Ajit Gokhale by keeping them present in the Office of the Sub-Registrar.

15. It is thus, prima facie clear that the

applicants and the original owners of the disputed land represented before the informant that the disputed land would be sold out to respondent no.2 only and thereby induced him to part with a huge amount of Rs.50,51,000/-. The amount of Rs.50,00,000/- is stated to have been paid to applicant no.1 by cheque bearing No.549064, which has been encashed by her on 30.05.2013 itself. The amount of Rs.51,000/- is stated to have been paid to her in cash. The price of the disputed land is stated as of Rs.85,00,000/-.

16. As seen from the MOU dated 21.05.2013, applicant no.1 had proposed to purchase the disputed land for Rs.30,00,000/-. The same land has been proposed to be sold out by applicant no.1 to respondent no.2 for a consideration of Rs.85,00,000/- immediately after 9 days. If that be so, price of the disputed land would have been much more than Rs.85,00,000/- on 05.10.2015, when it is shown to have been sold out by the original owners, viz. Ajit Gokhale and Bharati Bapat, to Nandkishor Aagharkar. However, it is strange to note that the said land was priced at Rs.20,00,000/- only. This fact prima facie creates suspicion about the

genuineness of the sale deed dated 05.10.2015.

17. In the above circumstances, when the informant claims that the applicants and the original owners had intention to cheat him since inception and, therefore, induced him to part with the amount of Rs.50,51,000/-, on the false pretext of selling the disputed land to respondent no.2 and with a view to thwart his claim in respect of the disputed land, further, executed sale deed in favour of Nandkishor Aagharkhar as a part of conspiracy to cheat him, prima facie, cannot be seen with suspicion.

18. In our view, the facts contained in the F.I.R. prima facie disclose existence the ingredients of the alleged offences and further investigation into the above numbered crime would be immensely necessary to dig out the truth. The dispute between the parties prima facie is not purely of a civil nature only. We are not inclined to stop the further investigation by quashing the F.I.R.

19. We make it clear that the observations made by us herein-above, would have limited effect for the

decision of this criminal application and would not influence the further proceedings arising out of the above numbered crime. Further investigation into the crime also shall proceed without being influenced by the said observations. In the result, we pass the following order.

O R D E R

- (i) The Criminal Application is rejected.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.S. SHINDE**]
JUDGE

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