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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.519 OF 2016

Dr. Amar @ Amarsingh Shivajirao Shende and Ors.	... Applicants
Vs.	
State of Maharashtra and Anr.	... Respondents

Mr. Vishwanath Suresh Talkute for the Applicants.
Ms. M.H. Mhatre, APP for the Respondent No.1.
Mr. Ashish Satpute for the Respondent No.2.

**CORAM : A.S. OKA &
A.A. SAYED, JJ.**

DATE : 18th JULY, 2016

PC.

1 On 27th June, 2016 time was sought by the learned counsel appearing for the second Respondent. Accordingly, time was granted till today. The order dated 27th June, 2016 specifically records that endeavour shall be made to decide this application finally at the stage of admission.

2 Today, the learned counsel appearing for the second Respondent again seeks time. For the reasons which we have recorded in this judgment and order, we are of the view that the second Respondent is not entitled to seek time.

3 This is an application under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) for quashing the FIR being C.R.No.119 of 2016 registered with Sangola Police Station, District Solapur. The second Respondent is the first informant. In the statement on the basis of which the FIR was registered, she stated that her father Shivajirao Anandrao Shende transferred land bearing Gat No.169 admeasuring 3 Hectares 74 Ares and land bearing Gat No.683/1 admeasuring 94 Ares situated at village Medshingi, Taluka Sangola, District Solapur in her name in the year 1987. She stated that subsequently on perusal of 7/12 and 8A extracts, she realised that her name has been deleted from the said lands and the name of the first Applicant who is the brother of the second Respondent has been mutated. It is alleged that though the second Respondent called upon the first Applicant to explain, he had no explanation. It is alleged that the first Applicant made younger sister of the second Respondent to impersonate her before the office of the Sub-Registrar of Assurances at Sangola and got a false Sale Deed executed and registered. The second Applicant is the said younger sister of the second Respondent. The third Applicant is the witness to the transaction.

4 When application for anticipatory bail bearing No.291 of 2016 came up before the learned Single Judge of this Court, in the

order dated 5th April, 2016 the learned Single Judge recorded the statement of the first Applicant herein that he has repaid the entire loan amount to the Bank against the mortgage of one of the two lands of Gat No.683/1. He made a statement which is recorded in the said order that he is ready to re-convey both the lands to the second Respondent on as is where is basis. Paragraphs 1 and 2 of the order dated 5th April, 2016 passed in the said anticipatory bail application reads thus :-

- “1. Learned Counsel for the applicants states that the applicant no.1 has repaid the entire loan amount to the Bank, which he had taken after mortgging Gat No.683/1. He states on instructions, that the applicant no.1 is ready to re-convey both the lands i.e. Gat Nos.169 and 683/1 to the complainant, on as is where is basis.
2. Mr. Nikam, learned counsel for the complainant, on instructions of the complainant, who is present in Court states, that on re-convening of the said lands in her favour, the complainant is ready to give her no objection to the quashing of the complaint, i.e. C.R. No.119 of 2016, lodged by her against the applicants. The said statement is accepted.”

5 On 20th April, 2016 the learned counsel appearing for the Applicants made a statement before the learned Single Judge stating that the second Respondent will file a suit for cancellation of the Sale Deed and the first Applicant will give no objection.

6 Accordingly, Special Civil Suit No.24 of 2016 filed by the second Respondent in the Court of Civil Judge, Senior Division at Pandharpur for declaration that the Sale Deed dated 9th November 2010 allegedly executed in favour of the first Respondent is illegal and void. The consent terms were filed at Exhibit-12 in the said Suit on 27th April, 2016. Clause 7 of the consent terms specifically records that after the decree is passed in terms of consent terms, the second Respondent will give consent for quashing the proceedings of the impugned FIR. On 27th April, 2016, the learned Civil Judge, Senior Division, Pandharpur recorded a settlement in terms of the consent terms and directed that a decree be drawn in terms of the consent terms.

7 In view of clause 7 of the consent terms, after consent decree dated 27th April, 2016 was passed, the second Respondent was under an obligation to give consent for quashing the FIR.

8 Today, the learned counsel appearing for the Applicants has placed on record the final order dated 4th May, 2016 passed in the application for anticipatory bail filed by the Applicants. The said order is taken on record and marked 'A-1' for identification. Clause 2 of the order records that decree has been passed in the aforesaid suit by consent of the parties. What is material is clause 4 which reads thus :-

“4. Learned Counsel for the complainant, on instructions of

the complainant, who is present in Court, states that in view of the above, the complainant has no grievance against the applicant and is ready to give her no objection for quashing of complaint, being C.R.No.119 of 2016 lodged by her against the applicants. She also has no objection for the present application being allowed.”

9 Hence, the learned counsel appearing for the second Respondent on 4th May, 2016 made a solemn statement before the learned Single Judge that the second Respondent has no objection for quashing the complaint.

10 The learned counsel appearing for the Applicants on instructions states that name of the second Respondent has been mutated in the revenue records in respect of the said lands.

11 Today, time is sought by the learned counsel appearing for the second Respondent only on the ground that the Applicants are not abiding by the consent decree. If this is the grievance, the remedy of the second Respondent is to enforce the decree. After having solemnly agreed in the consent terms to give consent for quashing the FIR and after solemnly agreed before the learned Single Judge of this Court on 4th May, 2016 now the second Respondent cannot back out and resist the application. Now consideration of criminal proceedings will be abuse of process of law.

12 From the perusal of the FIR and from the legal notice issued by the second Respondent and the reply issued by the Advocate for the Applicants to the said notice, we find that the dispute between parties was essentially a dispute over an agricultural land which was originally owned by the father of the Applicant and the second Respondent. Now there is a complete settlement of the dispute in respect of both the lands in the form of consent decree of the civil Court. Therefore, this is a case where the law laid down by the Apex Court in the case of Gian Singh Vs. State of Punjab and Another¹ will be applicable.

13 For the reasons which we have recorded above, continuation of criminal proceedings will be unjust and abrasive to the Applicants.

14 Hence, application must succeed and we pass the following order :-

ORDER

- (i) Rule is made absolute in terms of prayer clause (a) which reads thus :-

“(a) This Hon'ble Court be pleased to exercise its inherent powers u/s 482 of the Code of Criminal Procedure, 1973 and be pleased to quash FIR

¹ (2012)10 SCC 303

No.0119 of 2016 registered with the Sangola Police Station u/s 420, 467, 468, 170 of the I.P.C.”

- (ii) We make it clear that we have made no adjudication on the issue whether the Applicants have committed breach of the consent decree passed by the Civil Court on 27th April, 2016. All remedies in that regard of the second Respondent are expressly kept open.

(A.A. SAYED, J)

(A.S. OKA, J)