

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [ABA] No.437 of 2016

(Umakant Vitthalrao Mendhe vs. State of Maharashtra, through P.S.O. Imamwada, Nagpur & anr.)

with

Criminal Application [ABA] No.458 of 2016

(Harshad Prabhakar Chikhale vs. State of Maharashtra, through P.S.O. Imamwada, Nagpur & anr.)

with

Criminal Application [ABA] No.509 of 2016

(Narendra s/o Hemant Parate vs. State of Maharashtra, through P.S.O. Imamwada, Nagpur & anr.)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

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Court's or Judge's Orders

Shri S.V. Sirpurkar, Advocate for the Applicant in ABA No.437/16.
Shri S.R. Deshpande, Advocate for the Applicant in ABA No.458/16.
Shri C.L. Anjankar, Advocate for the Applicant in ABA No.509/16.
Shri S.J. Kadu, A.P.P. for the Non-Applicant/State.
Shri P.K. Mishra, Advocate for the Complainant in ABA No.437/16.

CORAM : S.B. SHUKRE, J.
DATE : 20th OCTOBER, 2016.

Heard the learned Counsel for the respective applicants and the learned A.P.P. for the State, assisted by the learned Counsel for the complainant.

Perused the case-diary. The allegation is that even though the land, which was agreed to be sold by the applicants to the complainant - Ananta Rahate, was not converted into non-agricultural use, an impression was created by the applicants with the complainant that it was indeed legally and duly converted into non-agricultural use by producing certain documents, alleged to be false, and thereby

the complainant was induced to part with an amount of Rs.3.00 lacs, while agreeing to purchase the plot in question.

The learned A.P.P. has invited my attention to the complaint filed by the Nagpur Improvement Trust (N.I.T. for short) on 11/09/2013 with Senior Police Inspector, Police Station Ambazari, Nagpur, urging him to take an action against these applicants under criminal law for forging of orders of the Collector showing that the land involved in this case was sanctioned by the Collector for conversion into non-agricultural use. He submits that when the complaint in this case was filed by Ananta Rahate on 15/06/2015, offences punishable under Sections 406, 465, 467, 468, 471 and 420 read with Section 34 of the Indian Penal Code were registered against the applicants and investigation was started when it was noticed that way back in the year 2013, the Senior Police Inspector of Police Station Ambazari, Nagpur was requested by the N.I.T. to register the offences against these applicants. This letter shows that some inquiry was already made by the N.I.T. in the past and the N.I.T. had come to a conclusion that certain documents, particularly the document showing according of sanction for conversion into non-agricultural use, were forged by these applicants. He submits that now that an opportunity has been created by the fresh complaint, a

detailed investigation into the whole issue is required and, therefore, these applications deserve to be rejected.

The learned Counsel for the respective applicants submit that except for this complainant - Ananta Rahate, there is no other person, who has grievance against these applicants and that is the reason why nobody else has approached the police in the matter. They further submit that this particular complainant - Ananta Rahate has filed a civil suit seeking enforcement of specific performance of the agreement to sell of the disputed plot to the complainant, in which the learned Judge of the Civil Court has also granted a temporary injunction subject to condition that the complainant's depositing in the Court an amount of about Rs.4.00 lacs within the stipulated time, which amount has not been so far deposited by the complainant. They further submit that in the plaint filed in this regard by the complainant, there is no pleading made by him that there was any forgery of any document by these applicants, rather, the submission is that they committed default in performing their part of promises and, therefore, the agreement has been sought to be enforced specifically.

Filing of a civil suit seeking specific performance of contract regarding the sale of disputed plot to the

complainant by the applicants is not in dispute. Granting of conditional order of injunction by the Civil Court is also not in dispute. The copy of the plaint is forming part of the paper-book to the application being Criminal Application [ABA] No.437/2016. On going through the same, one can very well see that even though the complainant has alleged in his complaint filed against the applicants that he has been cheated by the applicants by using forged documents as genuine, similar pleading has not been taken in the plaint. The perusal of the conditional order of temporary injunction discloses that the Civil Court has found that it is an admitted fact that there was an agreement to sale to the disputed plot between the complainant and these applicants. The learned Judge has not made any comment regarding the nature of the agreement in question.

These facts and circumstances of the case would disclose that on the one hand, the complainant is submitting that he has been cheated by the applicants by inducing him to enter into an agreement in question wherein he paid part of the consideration to the applicants and on the other hand, the complainant is also seeking to enforce specifically this very agreement by filing a civil suit. This would also show that the complainant himself is not sure as to whether he is really

cheated in this case by the applicants or not.

The learned A.P.P. for the State has submitted that there are several other persons, who are similarly induced by the applicants. Admittedly, no such other person has so far filed any complaint against these applicants. In fact, the N.I.T. had filed the complaint against these applicants. But, the then Senior Police Inspector, Police Station Ambazari, Nagpur did not think it fit to register any crime against the applicants. That complaint, as stated earlier, was of the date of 11/09/2013. On going through this complaint, it appears that the N.I.T. has made some conclusions against these applicants on certain presumption without really making any enquiry as to who could have forged the disputed documents. There is, in fact, the complaint previously filed by the applicant in ABA No.437/2016 on 10/08/2013 urging that forgery has been committed by the previous owner - Amit Badki. This was filed before the Police Inspector, Police Station Hudkeshwar, Nagpur City. However, on that complaint also, no action was taken.

In these circumstances, I am of the view that all the applications deserve to be allowed. Hence, the order.

The applications are allowed and orders of grant of interim anticipatory bail to each of the applicants by this

Court on 8th July, 2016 (Criminal Application No.437/2016),
15th July, 2016 (Criminal Application No.458/2016) and 4th
August, 2016 (Criminal Application No.509/2016) are hereby
confirmed on the same conditions.

The applications are disposed of accordingly.

**sdw*

JUDGE

C E R T I F I C A T E

I certify that this order uploaded is a true and correct copy of the original signed order.

Uploaded by: S.D. Waghmare
P.A. to the Hon'ble Judge.

Uploaded on : 21/10/2016