

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

CRIMINAL APPLICATION NO. 424 OF 2017

1. Afsaribegum W/o Iqbal Salim,
Age 51 years, Occu. Household
 2. Numan Salim S/o Iqbal Salim,
Age 24 years, Occu. Student,
Both R/o. Plot No. 13B, Times Colony, Katkat Gate,
Taluka and District Aurangabad.
 3. Fahim Akhtar Mohammad Gaus,
Age : 63 years, Occu. Retired Government Servant,
R/o. Plot No. 14A, Times Colony, Katkat Gate,
Taluka and District Aurangabad.
 4. Mohammad Amjad Madin Mohammad Gaus,
Age : 51 years, Occu. Business,
R/o. Sadaf Colony, Katkat Gate,
Taluka and District Aurangabad.
- ...Applicants
(Orig. Accused No. 2, 3, 7 & 8)

VERSUS

1. State of Maharashtra,
Through the City Chowk Police Station,
Taluka and District Aurangabad.
 2. Shaikh Mujataba Rafiq Abdul Wahed,
Age : 51 years, Occu. Business & Agriculture,
R/o. Plot No. 28/B, Times Colony,
Near Usmania Masjid,
Taluka & District Aurangabad.
- Orig. Complainant
... Respondents

WITH

CRIMINAL APPLICATION NO. 425 OF 2017

1. Sarvar Pasha Afzal Miya Pasha,
Age 45 years, Occu. Business,
R/o. Times Colony, Katkat Gate,
Taluka & District Aurangabad.
2. Mohammad Wasim Mohammad Azim
Age : 33 years, Occu. Business,
R/o. Sadaf Colony, Katkat Gate,

Taluka & District Aurangabad.

3. Mohammad Afsar Shamim Mohammad Gaus,
Age : 48 years, Occu. Business,
R/o. Times Colony, Katkat Gate,
Taluka & District Aurangabad.
4. Iqbal Salim Mohammad Gaus,
Age : 61 years, Occu. Retired Govt. Servant,
R/o. Plot No. 13B, Times Colony,
Katkate Gate, Taluka & District Aurangabad. ...Applicants
(Orig. Accused No. 4, 5, 6 & 1)

VERSUS

1. State of Maharashtra,
Through the City Chowk Police Station,
Taluka and District Aurangabad.
2. Shaikh Mujataba Rafiq Abdul Wahed,
Age : 51 years, Occu. Business & Agriculture,
R/o. Plot No. 28/B, Times Colony,
Near Usmania Masjid, Orig. Complainant
Taluka & District Aurangabad. ... Respondents

.....
Mrs Rashmi S. Kulkarni, Advocate for the applicants
Mr M. M. Nerlikar, APP for respondent/State
Mr M. R. Jadhav, Advocate for respondent No. 2
.....

CORAM : S. S. SHINDE &
A. M. DHAVAL, JJ.

RESERVED ON : 20.09.2017.
PRONOUNCED ON : 13.10.2017.

JUDGMENT (PER A. M. DHAVAL, J.) :

1. Rule2. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

2. These applications are filed u/s 482 of the Cr.P.C. for quashing of FIR at C.R. No. 0519 of 2016 registered with City Chowk Police Station, Tq. & Dist. Aurangabad, against the applicants in both the applications for the offences punishable u/s 403, 409, 420, 423, 467, 468, 471, 504, 506 & 120 B of the IPC. The applicants in Cri. Appln. No. 424/2017 are accused Nos. 2, 3, 7 & 8 whereas; the applicants in Cri. Appln. No. 425 of 2017 are accused Nos. 4, 5, 6 & 1, respectively.

3. The facts relevant may be stated as under :

Respondent No. 2 - Shaikh Mujtaba has lodged impugned FIR dt. 22.11.2016 at City Chowk Police Station, Aurangabad. As per FIR, the informant was dealing in real estate. Accused No.1 - Iqbal Salim Mohd. Gaus (A1) was working as Shirastedar in DILR Office while his brother – Fahim Akhtar (A7) was working there as a Clerk. He has retired on 31.05.2011 (Exh. P-1). As per FIR, one real estate agent Syed Ismail informed Mujataba (R2) that Iqbal Salim (A1) was having many proposals for land dealings. The FIR shows that, Iqbal Salim (A1) represented to him that he was having several lands but as he was Government Servant, he had purchased those lands in the name of different persons. He shows willingness to sell those lands. Then after negotiations, Shaikh Mujataba (R2) entered into six

transactions out of which two were outright sale deeds and four were agreement to sale as shown in the accompanying chart.

Sr. No	Type of agreement	Property details short form for acre & guntha (A) & (G)	Particulars short form for accused (A)	Payments Crore (Cr.)	Complaints
1	Agreement to Sell dt. 02.05.2011	Land of 2 A 30 G at Gut No. 24/3 at Bhavsingpura for Rs. 60.00 lakhs	Iqbal Salim (A1), Ajij Momin (A10) Mujaffar (A9) (A2, A3, A4 & A5 present)	20 lakhs by chq. to Ajij Momin (A10) 15 lakhs by chq to Mujaffar (A9) 10 lakhs cash to Iqbal Salim (A1)	No sale deed. Assured but earnest not returned.
2	15.07.2011 Oral two agreements to sell on 02.07.2014	G. No. 23 (15 acre+2 acre at Nandrabad). Price 18.00 lakhs per acre.	Iqbal (A1), Afsar Shamim (A6) (A2, A3 present)	20 lakhs to Md. Afsar Shamim (A6) Postdated chq of 10 lakhs to Md. Afsar Shamim (A6) 1.20 cr. to A1 & A6	No sale deed Dispute with original owner pending.
3	Oral Agreement to sell dt. 01.11.2011 & written agreement dt.22.07.2013	Gut No. 209 at Ohar, 1A 27G. Rs.80.00 lakhs per acre.	Iqbal (A1) Mujaffar (A9) Abdul Majid (A10) Yusuf Khan Sarvar Pasha (A4)	15 lakhs to Yusuf, Sarvar Pasha (A4) & Iqbal Salim (A1) 1 Cr. Cash to Iqbal (A1) & Sarvar (A4)	Transaction not completed
4	Oral agreement dt. 1.11.11 & written agreement dt.22.07.13	Ohar Gut No. 209 (1H 21R) 3A 1G	Sharifabi Iqbal (A1) Sarwar Pasha (A4) Wasim (A5)	75 lakhs to A1	Transaction not completed
5	Sale deed in favour of R2's nephew.	Gut No. 202 7A 17G for 2.65 crores.	Mujaffar A9 Iqbal A1 Afsar (A6) Sarwar (A4)		No possession
6	Oral agreement to sell 07.03.2012 Price 3 Cr per acre.	3 A 30 G Gut No. 58 at Satara Beed-bypass.	50 lakhs cash to A1. 1 Cr. by four cheques (A4-50 lakhs & A5-50 lakhs).		No sale deed.
7	In 2013, Reg. Sale Deed. Price 1.60 Cr.	Gut No. 206, 79 G at Ohar.	A1 Iqbal A4 Sarwar A2 Afsaribegum A3 Numan		No possession

4. Thus, the chart shows that, the agreements to sell were executed by making some payments by cheque in favour of the persons holding the land in their name and it is alleged that huge cash amounts were paid to Iqbal Salim (A1). The FIR shows that applicant Nos. 1-Afsaribegum (A2) & 2-Numan (A3) in Cri. Appln No. 424 of 2017 were present at the time of first transaction between Shaikh Mujtaba (R-2) on one hand and Iqbal Salim (A1) and Sarvar Pasha (A4) & Mohd. Wasim (A5) on the other. Out of the consideration of Rs. 60.00 lakhs, two cheques were issued of Rs. 20.00 lakhs & 15.00 lakhs respectively in favour of Ajij Momin and Mujaffar, while Iqbal Salim (A1) received cash amount of Rs. 10.00 lakhs. There was assurance to execute the sale deed and to deliver possession in favour of R2 but it was not done.

5. The second transaction shows that, two lands of 15 acre and 2 acres respectively from Nandrabad in the name of Mohd. Afsar Shamim Mohd. Gaus were agreed to be sold at the rate of Rs. 18.00 lakhs per acre. Cheque payments of Rs. 20.00 lakhs & 10.00 lakhs were made in the name of Afsar Shamim Mohd. Gaus while cash of Rs.1.00 crore was given to Iqbal Salim (A1) & Mohd. Afsar Shamim (A6) in presence of Afsaribegum (A2) & Numan (A3). Besides, additional cash of Rs.20.00 lakhs was also paid. Two agreements to sale dt. 02.07.2014 were executed in favour of Shaikh Mujataba (R2)

by Mohd. Afsar Shamim (A6). However, neither possession was given nor execution of sale deeds was done.

6. The third transaction is in respect of 3 acres 7 gunthas at Gut No. 209, Ohar. The rate of the said land was Rs. 80.00 lakhs per acre. The owner was Yusuf Khan Afjal Khan. Two stamp papers of Rs. 100/- were procured and agreement to sale were executed by making payment of Rs. 15.00 lakhs, which was acknowledged. Besides, cash of Rs. 1.00 crore was paid to Iqbal Salim (A1) & Sarvar Pasha (A4). On the same day, one Sharifabi at the instance of Iqbal Salim (A1) executed agreement to sale in respect of land of 3 acre 1 guntha for which Shaikh Mujtaba (R2) paid cash of Rs. 75.00 lakhs to Iqbal Salim (A1). Thus, total amount of Rs. 1.90 Crore was paid for purchasing the land at Ohar. However, neither possession was given nor sale deed was executed.

7. On 15.12.2011, Mujaffar Khan as partner of Iqbal Salim Gaus executed sale deed in favour of R2-Shaikh Mujtaba's nephew Shaikh Ajaharoddin Shaikh Akhtaroddin in respect of 99 gunthas land at Gut No. 202 for Rs. 2.65 crores. The amount was paid to Mujaffar Khan, Iqbal Salim (A1), Afsar Shamim (A6) & Sarvar Pasha (A4) but the purchasers did not receive the possession.

8. In March-2012, there was further agreement in respect of land of 3 acres 30 guntha at Gut No. 58 at Satara Beed By-pass, Aurangabad, of which rate agreed was Rs. 3.00 crores per acre. It was executed for compensating the losses sustained in the earlier transactions. Sarvar Pasha (A4) & Mohd. Wasim (A5) had shown agreement to sale of the said land in their favour and assured to execute sale deed and on the said assurance Iqbal Gaus (A1) had taken Rs. 50.00 lakhs in cash and 2 cheques of Rs. 25.00 lakhs each on 07.03.2012/12.03.2012 in favour of Md. Wasim Md. Azim (A5) & 2 cheques of Rs. 25.00 lakhs each in favour of Sarvar Pasha Afzal Miya Pasha (A4) as part consideration for purchasing land of 3 acres 30 gunthas. But the said contract could not be materialized and the vendors agreed to refund the amount but did not refund the same.

9. In 2013, Iqbal Salim, Sarvar Pasha (A4), Afsaribegum (A2) & Numan (A3) received 1.60 crore and executed sale deed in respect of 79 gunthas at Gut No. 206 at Ohar in favour of son of Shaikh Mujataba (R2) but the said land was in dispute and the purchasers could not get the possession of the said lands.

10. As huge money of Rs. 9.75 crores of Mujtaba (R2) remained blocked in the transactions without getting possession of the lands, after negotiations, Iqbal Salim Gaus (A1) executed writing

dt.19.06.2014 on notarized stamp paper and thereby agreed to refund the amount within one year. Shaikh Mujtaba (R2) waited for one year and thereafter when he had gone to the accused persons for demanding money, he was intimidated and abused and therefore he lodged FIR.

11. Ld. advocate Mrs Rashmi S. Kulkarni for the applicants sought quashing of the FIR on the following grounds :

- (i) In respect of the same allegations, R2-Mujtaba had made 3 complaints to Supdt. of Police or Police Inspectors and after inquiry it was held that there was no substance in the complaints, those were civil disputes and hence no action was taken. These material facts were suppressed by R2.
- (ii) The allegations even if taken at their face value do not make out ingredients of the relevant offences registered against the applicants.
- (iii) The allegations disclose that those are civil disputes.
- (iv) No specific role is assigned to any of the applicants from Cr. Appln No. 424/2017.

- (v) Even in case of applicants from Cr. Appln No.425/2017, no criminal acts are attributed to the applicants.
- (vi) The so-called agreement dt. 19.06.2014 is forged and fabricated. It does not bear the signature of Iqbal Salim (A1). The notary had stopped his work due to paralysis and he had lodged complaint that his stamps were missing. He has denied that such a document was notarized by him.

12. Mrs Kulkarni relied on the judgment of the Hon'ble Apex Court in the case of **Thermax Ltd. and Ors. Vs. K.M. Johny and Ors. (2011) 11 SCC 128**, wherein in para 29 it is held as under :

29) The entire analysis of the complaints with reference to the principles enunciated above and the ingredients of Sections 405, 406, 420 read with Section 34 IPC clearly show that there was inordinate delay and laches, the complaint itself is inherently improbable contains the flavour of civil nature and taking note of the closure of earlier three complaints that too after thorough investigation by the police, we are of the view that the Magistrate committed a grave error in calling for a report under Section 156(3) of the Code from the Crime Branch, Pune. In view of those infirmities and in the light of Section 482 of the Code, the High Court ought to have quashed those proceedings to safeguard the rights of the appellants.

13. In **Dalip Kaur and Ors. Vs. Jagnar Singh and Anr. (2009) 14 SCC 696**, it is held that, breach of contract on the part of the appellants by non-refunding the amount of advance would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Indian Penal Code. See *Ajay Mitra v. State of M.P.* 2003 CriLJ 1249.

14. Mrs Rashmi Kulkarni referred to the definitions of the various offences charged and the contents of the FIR and the earlier communication to the superior officers to submit that the necessary ingredients of the offences are not disclosed and in some cases, those are clearly afterthought. There is inordinate delay in lodging the FIR. She further argued that, the complainant was an ordinary mechanic and he could not have raised such a huge amount of Rs. 9.75 crores. Besides, the total amount is differently shown at different stages. The complainant had filed two suits in which the allegations are materially different. Respondent No. 2 is having criminal background and six cases are pending against him. There are some cases pending even against his witnesses. Hence, the allegations are inherently improbable and cannot be believed and the proceedings may be quashed.

15. Per contra, learned APP - Mr M. M. Nerlikar for respondent No. 1 and Mr M. R. Jadhav for respondent No. 2 vehemently opposed the application. They claimed that, accused No. 1-Iqbal Salim was serving in DILR Office. Therefore, he was not entitled to purchase lands and enter into dealings. He has entered into dealings by producing his relatives as vendors as the properties were purchased in their names. Huge amounts are received in cash. R2-Mujtaba was induced dishonestly to part away such huge amounts and he has received nothing. No sale deeds are executed in his favour in many cases whereas he has not received possession in any of cases including the cases where there are outright sale deeds. According to them, the FIR discloses role to each of the accused and there are no separate FIRs. The report was made to the Police Commissioner, who sent it to Begumpura Police Station and it was registered as FIR and thereafter it was transferred to City Chowk Police Station. No earlier FIR was registered. When such huge stakes are involved, this is not a fit case to stop the investigation by invoking powers u/s 482 of Cr.P.C. There is no likelihood of any miscarriage of justice. In fact respondent no. 2 has been duped for huge amount and, therefore, quashing of the proceedings would result into injustice.

16. After carefully considering the arguments and perusing the papers, we proceed to consider whether the FIR can be quashed against all the applicants or not.

17. Though the transactions look like having a civil flavour, those are not civil in nature. Iqbal Salim, who is accused no.1, is the main person in all the transactions but the documents are not executed by him. He has received huge amounts either as a consideration or a commission and the documents are executed by the persons in whose name the lands were standing. It is obvious that the amounts paid to Iqbal Salim are not disclosed in the documents. Therefore, respondent No.2 is not in a position to file suit against Iqbal Salim to recover the amounts paid to him. The amounts are huge in nature. It is argued that, respondent No. 2 was not in a position to make huge payment but in the complaint of accused no. 1 - Iqbal dt. 18.03.2016, it is disclosed that though respondent No. 2 was an ordinary mechanic, he has entered into land dealings and earned 20-25 crores of rupees. Therefore, the capacity of respondent No. 2 to make such a huge payment cannot be doubted. Though payment of huge amount by way of cash is suspicious, the transactions cannot be doubted as there are payments by cheque also and there are statements of various accused persons before the police admitting the transactions. It is also not disputed that, in many

transactions respondent no. 2 has not received possession of the lands.

18. However, we find that in the third transaction dt. 15.12.2011, on receipt of Rs.2.65 crores, Iqbal Salim (A1), Mujaffar (A9), Afsaribegum (A2) and Sarvar Pasha (A4) have executed registered sale deed. The contention of respondent No. 2 that he has not received any possession is falsified by the averments made by Shaikh Ajharoddin in RCS No. 411/2014. He claimed that, he received possession and he filed suit for injunction against Daud Khan and the court has also granted temporary injunction in his favour. Therefore, as far as this transactions is concerned, there is no substance in the case of respondent No. 2.

19. On 26.06.2013, Sarvar Pasha has executed registered sale deed of land of 1 H 39 R at Gut No. 206 on receiving a sum of Rs.1.00 crore or Rs. 1.60 crores. It is contended that the purchaser had not received possession but once the sale deed is executed, it is for the purchaser to obtain the possession. The buyer should be aware and should make proper inquiry before entering into the transaction. In the present case, so many transactions are executed by respondent No. 2 either personally or through his relatives. In all of which Iqbal Salim is involved. It was responsibility of respondent

No. 2 to make proper inquiry before purchase or execution of registered sale deed. We find that, no offence could be disclosed in respect of this transactions where there is outright sale.

20. The remaining transactions were executed between 02.05.2011 to 26.02.2012. In one case, the agreement to sell was executed on 02.07.2014. There is alleged disputed agreement dt. 19.06.2014 whereby accused no. 1 agreed to refund the entire amount to respondent No. 2 within one year. In the light of these facts, it is certain that FIR lodged on 22.11.2016 is very much belated. In fact, SCS No. 260/2013 in respect of first transaction was filed much earlier for recovery of Rs. 45.00 lakhs. In that case, amount of Rs. 20.00 lakhs was paid by cheque to Ajij Momin (A10) and cheque of Rs.15.00 lakhs in the name of Mujaffar (A9). There was cash payment of Rs. 10.00 lakhs to Iqbal Salim. For recovery of the said amount, Civil Suit has been filed but when the payments are made in cash are not shown in the document, it will no more remain a simple civil dispute.

21. As far as previous complaints are concerned, those are not strictly FIRs. The earliest in point of time is communication dt.21.08.2015 to Jt. Commissioner of Police, Mumbai (page 69) which only shows that respondent No. 2 had made payment of

Rs.35.00 lakhs to Iqbal Salim Mohd. Gaus (A1) near GPO office, Mumbai for investment in property at Aurangabad. Iqbal Salim has not given property nor amount. This is a transaction shown to have taken place at Mumbai. The other transactions which took at place Aurangabad, could not have been included in the said transaction.

22. Thereafter, on 09.12.2015, respondent No.2 made a report to CP Aurangabad. It is a vague communication showing various transactions in respect of the lands at Nandrabad, Bhavsingpura and Satara in Aurangabad. It refers to eight various transactions without disclosing the details thereof. It shows that, inspite of paying huge amounts, respondent No.2 had not received possession and he was intimidated and threatened by Iqbal Salim and his relatives. The names of various accused persons are also shown. It seems that, the Commissioner of Police directed inquiry and PSI (Economic Wing) made some inquiry. The statements of various accused persons were recorded. The inquiry revealed that, there were transactions between respondent No. 2 on one hand and Iqbal Salim and his relatives on the other. The report of PSI after the inquiry is not on record. In the first place, as held in case of **Lalita Kumari Versus Government of Uttar Pradesh and others (2014) 2 SCC 1**, the police including the Commissioner of Police had no right to conduct a detailed inquiry before registration of the FIR. If the allegations in the FIR disclose

commission of offences, the FIR should have been registered and thereafter the investigation should have been made. Mere conduct of inquiry does not amount to investigation of a crime. The report submitted to the Commissioner of Police also can not amount to FIR. There is no specific report as to what was the result of inquiry. Therefore, when the FIR was not registered, there was no bar for registration of FIR and the report to the CP cannot be treated as first FIR so as to make present FIR as second FIR.

23. There are allegations about third complaint which are not on record. Thus, we find no substance in the contention that the FIR deserves to be quashed on the ground that it is a second FIR. In respect of transaction dt. 19.06.2014, the applicants claim that it was not executed by them. They rely on the fact that the Notary Mr.Lathkar had lodged complaint of loss of stamps and also that he was paralyzed and not executed any agreement. Respondent No. 2 relies on the fact that the witness to the transactions has filed affidavit supporting to it. We find that this is the disputed question of fact and we should not dvelve upon in such disputed questions of fact while exercising powers u/s 482 of Cr.P.C.

24. After considering the seriousness and gravity of the offences, the payments made in cash without issuing receipts, the

involvement of Iqbal Salim in all the transactions without showing his name in any of the documents, we find that this is not a fit case for invoking the provisions of Section 482 of Cr.P.C. in general except in cases of the accused persons who have been assigned no role in the complaint. In this regard, we rely upon **State of Madhya Pradesh v. Surendra Kori 2013 CRI. L. J. 167.** In this case, the Dy. Registrar had fraudulently executed large number of sale deeds during the scheme period. The charge-sheet shows allegations that those were executed for wrongful benefit of scheme were registered without verification of signatures and the petitioner alleged to have conspired in registration of them. Considering the magnitude of crime, number of documents were executed fraudulently and involvement of the respondent therein could be decided only after an opportunity to the prosecution for proving the charges, order of quashing the charge-sheet and FIR was held liable to be quashed. In this case also, we feel it necessary to permit the prosecution to complete the investigation to find out the truth.

25. We rely upon **Rajiv Thapar and Ors. v. Madan Lal Kapoor 2013 CRI.L.J. 1272 SC, Amit Kapoor Versus Ramesh Chander and another (2012) 9 SCC 460 & Padal Venkata Rama Reddy Alias Ramu Versus Kovvuri Satyanarayana Reddy and others (2011) 12 SCC 437**, wherein it is laid down that, the inherent

powers are to be exercised sparingly in order to prevent the abuse of the process of court or patent miscarriage of justice where the court finds that ends of justice would be met by quashing of the proceedings. In the present case, when there are allegations that the applicants have taken huge amounts in crores from respondent No. 2 without issuing any receipt to him in the agreements which are difficult to enforce. We should not invoke the powers u/s 482 of Cr.P.C. No harm will be caused by allowing continuation of the investigation and thereafter leaving the parties to use appropriate remedies for discharge in case of submission of charge-sheet.

26. However, where there is a patent absence of material disclosing the involvement of some of the applicants in any transactions showing any criminal elements, the powers can be exercised.

27. After having said this, we find that the allegations in respect of applicant No. 1 and applicant No. 2 do not disclose their involvements are quite improbable. In FIR, it is alleged that respondent No. 2 Shaikh Mujataba entered into transaction with Iqbal Salim at his house and that time Numan (A3) and Afsaribegum (A2) were present there. Mere presence will not be sufficient to drag them into the litigation. Pertinently in respect of the same

transactions, Special Civil Suit No. 260/2013 is filed in which these two persons are not joined as party. No role has been assigned to them in this transaction. Similarly, with respect to the transaction of Nandrabad (15+2 acres), it is alleged that, Numan (A3) and Afsaribegum (A2) were present there. Again no role has been assigned to them in this transaction. Payment of amount by cheque is made to other accused and payment of cash of Rs. 1.20 crores is also allegedly made to other accused.

28. In respect of transaction of 3 acre 3 gunthas land at Gut No. 58 at Satara, it is shown that Afsaribegum (A2) was present along with Iqbal Salim (A1), Mohd. Wasim (A5) was showing the agreement to sale in favour of Sarvar Pasha (A4) and Mohd. Wasim (A5). But the payment of Rs.1.30 crores was made to Sarvar Pasha (A4), Mohd. Wasim (A5) and Iqbal Gaus (A1).

29. In respect of land of 79 R at Gut No. 206, it is shown that consideration of Rs. 1.60 crores was paid to Iqbal Salim (A1), Afsaribegum (A2), Mohd. Wasim (A5) and Numan (A3) and they executed sale deed in favour of son of respondent no. 2.

30. As far as applicant No. 3 - Fahim and applicant no. 4 - Mohd. Amjad Madin are concerned, only allegations are that Fahim

Akhtar was serving as a Clerk and both of them were showing the lands on behalf of Iqbal Gaus (A1). They were not party to the transaction between respondent No. 2 & Iqbal Salim (A1). No payments were made to them. Therefore, we find that, there is no material against applicants No. 3 & 4 to show their involvement in the said crime.

31. We find that, in case of sale deed dt. 15.12.2011 executed in 2013 in respect of land at Gut No. 202 by accepting Rs. 2.65 crore, there are no criminal elements involved in the said transaction. Respondent No. 2 has paid the money and he has received the possession. The purchasers under the sale deed has filed RCS 411/2014 and his possession has been confirmed by the court. The FIR in this regard deserves to be quashed.

32. We also find that, the last transaction described in the FIR in respect of land of 79 R from Gut No. 206 at Ohar is a complete sale transaction. The money is paid and the sale deed is executed. There are no criminal elements involved. Therefore, the FIR in respect of the said transaction also deserves to be quashed. When these outright sale deeds are excluded and the FIR is considered with respect to the allegations against each of the applicants, we find no material against accused no. 2 – Afsaribegum and accused no. 3 –

Numan. At the time of first transaction which took place in the house of Iqbal Salim, it is shown that they were present there. Since accused nos. 2 and 3 are wife and son of Iqbal Salim, their presence in the house do not connect them with the crime. No other role has been assigned to them in respect of transaction of land at Gut No. 24/3 at Bhavsingpur.

33. In respect of second transaction of land of 17 acres at Nandrabad, again they are shown present in their house when the transaction actually took place with accused no. 1 - Iqbal Salim and accused no. 6 – Mohammad Afsar Shamim Mohammad Gaus. Their mere presence in their own house is not an incriminating circumstance against them. The main role assigned to them is of receiving consideration sale price and execution of sale deed dt. 26.06.2013 in respect of land of 79 R at Gut No. 206. We have already held that, there are no criminal elements in these transactions as outright sale deed has been executed and it is not alleged that they were not the owners of the property. The accused nos. 2 & 3 have not been assigned no role in other transactions. Hence, the FIR against them deserves to be quashed.

34. As far as accused no. 8 - Mohammad Amjad Madin Mohammad Gaus is concerned, no specific role was assigned to him

in any of the transactions. He is younger brother of main accused – Iqbal Salim. His name has directly appeared in the last para. The contents of the FIR even if accepted at face value do not disclose any criminal act on the part of accused no. 8-Mohammad Amjad Madin Mohammad Gaus as well. Similar is the case with accused No. 7 - Fahim Akhtar. He has executed sale deed of land at Gut No. 202. No criminal element is involved in said transaction. He is not involved in any other transaction. We therefore find that, the FIR deserves to be quashed against accused Nos. 2, 3, 7 & 8, who are applicants in Criminal Application No. 424 of 2017. With respect to the remaining accused, there is material to show that they had taken part in various transactions along with accused no. 1 – Iqbal Salim. Therefore, the FIR cannot be quashed against the applicants from Criminal Application No. 425 of 2017. Hence, we pass the following order.

ORDER

- (i) Criminal Application No. 424 of 2017 is allowed.
- (ii) FIR at C.R. No. 0519 of 2016 registered against the applicants - Afsaribegum W/o Iqbal Salim, Numan Salim S/o Iqbal Salim, Fahim Akhtar Mohammad Gaus & Mohammad Amjad Madin Mohammad Gaus for the offences punishable u/s 403, 409, 420, 423, 467, 468, 471, 504, 506 & 120-B of the IPC

registered with City Chowk Police Station, Tq. & Dist. Aurangabad, is quashed.

(iii) Criminal Application No. 425 of 2017 is rejected.

(iv) It is clarified that the observations made in this judgment are *prima facie* in nature and made only for deciding the present applications.

31. Rule made absolute in the above terms.

[A. M. DHAVALA]
JUDGE

[S. S. SHINDE]
JUDGE

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