

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

CRIMINAL APPLICATION NO. 816 OF 2017

1. Dr. Bharatsingh S/o Dattusingh Gahelot,
Age : 73 years, Occu. Retired,
R/o. Ravindra Nagar, Nanded.
2. Suresh S/o Rajendra Bulbule,
Age : 73 years, Occu. Businessmen,
R/o. Pundlikwadi, Nanded.
3. Subhash S/o Rajendra Bulbule,
Age : 60 years, Occu. Businessmen,
R/o. Pundlikwadi, Nanded.
4. Shailesh S/o Janardhan Kolekar,
Age : 33 years, Occu. Student,
R/o. Yashwant Nagar, Nanded.
5. Umesh S/o. Janardhan Kolekar,
Age : 37 years, Occu. Medical Practitioner,
R/o. Yashwant Nagar, Nanded.

... Applicants
(Orig. Accused)

VERSUS

1. The State of Maharashtra,
Through Incharge Police Station Officer,
Police Station, Bhagya Nagar, Nanded,
Tal. & Dist. Nanded.
2. Dr. Krantikumar S/o. Nandlal Sharma,
Age : 70 years, Occu. Advocate,
R/o. BMC Colony, Nanded – 05. ...Respondents

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Mr P. R. Katneshwarkar, Advocate for the applicants
Mr M. M. Nerlikar, APP for respondent/State
Respondent No. 2 – in-person.
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CORAM : S. S. SHINDE &
A. M. DHAVALA, JJ.

RESERVED ON : 08.09.2017.
PRONOUNCED ON : 13.11.2017.

JUDGMENT (PER A. M. DHAVALA, J.) :-

1. This is an application u/s 482 of Cr.P.C. praying for quashing and setting aside of FIR at C.R. No. 294/2016 registered at Bhagyanagar Police Station, Nanded for offences u/s 420, 464, 471 r/w 34 of IPC against the applicants, who are original accused nos. 1 to 5, respectively.

2. Respondent No. 2 - Krantikumar S/o Nandlal Sharma is an advocate by profession. On 16.12.2016, he lodged the FIR at Bhagyanagar Police Station. As per his FIR, he and applicant no. 1 - Bharatsingh, applicant no. 2 - Suresh & applicant No. 3 - Subhash on 21.04.82 jointly purchased land of 4 acres 8 gunthas at survey no. 30B, Samata Nagar, Wadi (B), Nanded. The applicants no. 1 to 3 represented to the others that there was a partnership firm formed between applicants no. 1 to 3 and respondent no. 2 and executed a bogus retirement agreement in the name of respondent no. 2. The said bogus agreement dt. 05.06.1986 was produced before the High Court, Aurangabad in 2015 and the High Court has decided that it

was bogus and illegal. It was held that, the land was belonging jointly to applicants no. 1 to 3 and respondent no. 2. Meanwhile, on the basis of retirement agreement, applicants no. 1 to 3 claiming themselves to be exclusive owner of the land without informing respondent No. 2 executed some sale deeds. Applicants no. 1 to 3 have not given any amount to respondent no. 2. His name was deleted from the joint ownership and part of the land was sold to applicants no. 4 & 5. Thus, the applicants have committed offences of cheating and forgery punishable u/s 420,464, 471 r/w 34 of IPC. Respondent No.2 has also claimed that he had filed suit against applicants and the court has granted temporary injunction restraining applicants no. 1 to 3 from selling property and the same was confirmed upto the level of High Court.

3. The applicants challenged the filing of said FIR on the following grounds :

- (i) It is essentially a civil dispute.
- (ii) The applicants no. 1 to 3 have sold part of the land in 1983 to Chandrakala W/o Krantikumar Sharma, to which respondent no. 2 was a witness.

(iii) Respondent no. 2 had filed report to the police on 24.07.2013 but the police have declined to take cognizance thereof.

(iv) Respondent No. 2 then filed OMCA 716/2015 in the court of JMFC, Nanded. His request for directions u/s 156(3) of Cr.P.C. was turned down.

(v) The complaint is full of misleading facts and is not tenable on the principles of estoppel. It is filed with a view to harass the applicants.

4. Respondent No. 2 has filed affidavit-in-reply whereby he contended that the unregistered document of so-called retirement deed is false and bogus and creates no rights. It was executed on a stamp paper purchased by a third party. Applicants no. 1 to 3 had arranged to beat respondent no. 2 brutally on 16.04.2016 in the court premises of which respondent No. 2 has made complaint to the Principal District Judge, Nanded and to the High Court, Mumbai. Again on 04.07.2015, there was an attempt to strangle him in front of the presiding Judge 2nd CJSD, Shri. S. R. Pawar. Applicant No. 1's son Pawan Singh an advocate, a hefty and tall fellow, had intimidated respondent no. 2 on 04.07.2015 in court campus. They

have threatened respondent no. 2 that his house would be blown out. The so called retirement deed is anti-dated typed on a stamp paper purchased by third party. It was executed on 01.04.1985 but the stamp paper was purchased on 30.04.1985. Thus it is on the face of it invalid document. The witness to the said document was murdered. The document is held to be irrelevant and insignificant by the Hon'ble High Court. Ld. advocate Mr Katneshwarkar for applicants no. 1 to 3 has exceeded his limit by trying to use it. In fact, respondent no. 2 has alleged that, Mr Katneshwarkar has committed contempt of court and action should be taken against him. There was no partnership by name G. B. Enterprises, as claimed by applicants no.1 to 3. The land in question is still shown in the joint name of applicants no.1 to 3 and respondent no. 2. The rejection of application of respondent no. 2 by JMFC will not adversely affect the validity of FIR registered in view of change in circumstances. The case of oral partnership is unacceptable. Applicants no. 1to 3 sold part of the land to applicants no. 4 & 5 by registered sale deed dt. 28.12.1992 and thereby they have committed offence of cheating and criminal breach of trust and this fact was kept hidden for 25 years. Respondent No. 2 & other joint owners had given a power of attorney to applicant no. 1 dt. 01.04.1985 and by virtue of said power of attorney, he had entered into some transactions.

5. Mr Katneshwarkar, learned counsel for applicants no. 1 to 3 argued that, way back in 1982, respondent no. 2 and applicant nos. 1 to 3 had formed oral partnership and by retirement deed dt. 01.04.1985 (Exh B page 20), respondent no. 2 has retired from the said partnership. He has not challenged this partnership deed for years together. The applicants no. 1 to 3 have executed registered sale deed in favour of respondent no. 2's wife Chandrakala w/o Krantikumar Sharma on 05.06.1986 (Exh. C page 23) which is signed by respondent No. 2 as attesting witness. It was executed by applicants no. 1 to 3 as partners of G. B. Enterprises, Nanded.

6. On 24.04.2013, respondent No. 2 had moved Superintendent of Police and SDPO, (Exh. D page 26), making similar complaint. Inquiry was held in this regard and statements of the applicants no.1to 3 were recorded and thereafter decision was taken not to direct registration of offence. Thereafter, respondent no. 2 on 02.02.2015 submitted a similar report to PI, Nanded (Page 34 of the compilation) but no cognizance was taken. Then respondent no. 2 moved the JMFC by MA No. 716/2015 dt. 19.06.2015 (Exh. E 38). The court declined to issue directions u/s 156(3) of Cr.P.C. by order dt. 12.10.2015. In writ petition no. 6785/2015, decided on

16.08.2016, it was merely held that the retirement deed is irrelevant as it was not registered. It is not stated to be forged or fabricated. Respondent no 2 has availed civil remedy by filing RCS 113/2011 in respect of the same relief and the ld. Judge has granted temporary injunction. It was confirmed by District Court, Nanded in MCA No. 3/2012. The applicants are following the said order of injunction. The applicants have challenged the order of injunction by filing SLP and the same has been admitted. He pointed out that, sale deed dt.28.12.1992 (Exh. I page 74) was executed by applicants no. 1 to 3 in favour of applicants no. 4 and 5 and argued that this transaction has been challenged after a period of 24 years. In the light of these facts, registration of FIR against the applicants is an abuse of process of the court. It is purely a civil dispute and the FIR deserves to be quashed.

7. Per contra, respondent no. 2 relied on sale deed dt. 29.03.82, which shows that the land in question was purchased by applicants no. 1 to 3 and respondent no. 2, jointly. The name of respondent no. 2 still appears in the 7/12 extract dt. 21.06.2017.

8. Mr Katneshwarkar brought to our notice that respondent no. 2 is making serious allegations against him only because he is

representing his clients, respondent no. 2 has issued notice of contempt of court to him.

9. Respondent No. 2 has advanced argument as per his reply affidavit. Ld. APP Mr M. M. Neralikar for respondent no.1 supported the registration of FIR. The points for our consideration with our findings thereon are as follows.

Sr. No.	Point	Finding
1	Whether the registration of FIR after rejection of application u/s 156(3) is tenable?	In the affirmative.
2	Whether the FIR deserves to be quashed on the ground that (a) it is a civil dispute (b)extremely belated (c) not disclosing the ingredients of relevant sections?	In the affirmative with respect to applicants No. 4 &5. In the negative insofar applicants No. 1 to 3.

10. The law regarding circumstances in which the FIR can be quashed is well settled. In State of Haryana vs Ch. Bhajan Lal & Ors, the following principles laid down by the Hon'ble Apex Court.

a.	<i>Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value</i>
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	<i>and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.</i>
<i>b.</i>	<i>Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.</i>
<i>c.</i>	<i>Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.</i>
<i>d.</i>	<i>Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.</i>
<i>e.</i>	<i>Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.</i>
<i>f.</i>	<i>Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act,</i>

	<i>providing efficacious redress for the grievance of the aggrieved party.</i>
g.	<i>Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.</i>

11. The first ground raised for quashing of FIR is that, it is a civil dispute. However, the facts reveal that the land of 4 acres & 8 gunthas was purchased by two sale deeds in the year 1982 jointly in the name of applicants no. 1 to 3 and respondent no. 2. Respondent no. 2 had a share therein and the same could have been transferred only by registered document but no registered document was executed. Applicants no. 1 to 3 came with a case of formation of unregistered partnership G.B. Enterprises and thereafter retirement by respondent no. 2 from the said partnership on 01.04.1985. Respondent No. 2 has denied that he has executed such retirement deed and has claimed that he was not aware of the said retirement deed till 2013. This retirement deed dt. 01.04.1985 is executed on a stamp paper purchased on 30.04.1985, which is unregistered. Obviously it is not legal and it is highly suspicious. Respondent No. 2 has alleged that it is a forged document. He claimed that his name

continued as a joint owner along with applicants no. 1 to 3 in the revenue record till today. He has filed 7/12 extract dt. 21.06.2017 showing his name along with applicants no. 1 to 3. Thus, the allegations in the FIR sought to be quashed show that, applicants no. 1 to 3 in order to deprive respondent no. 2 of his share in the huge land of 4 acres & 8 gunthas created false documents. He has alleged that, he has not received any money for retirement. The applicants have not produced any document to show that there was formation of oral partnership and the same was dissolved by settling the accounts. No such document showing payment of money has been produced. In absence of such material, *prima facie*, there is a clear attempt by applicants no. 1 to 3 to create a false document to deprive respondent no. 2 of his share in the land. Such an act of applicants no. 1 to 3 cannot be said to be a civil dispute. Of course, respondent no. 2 cannot claim all his rights by filing a criminal case and he was required to file a civil suit for the reliefs which he cannot get in the criminal court. Therefore, mere filing of civil suit is not a ground to quash the FIR on the ground that it was a civil dispute.

12. It is also argued that, this FIR is extremely belated. The document was executed in 1985 whereas; FIR is filed in 2016. However, respondent no. 2 has denied the execution of such

document which is an unregistered. He has claimed that, he was not aware of the document till 2013. Thereafter, he has approached the various authorities for prosecuting his grievances and ultimately he has filed this FIR. We find that, the delay of around three years cannot be a ground to quash the FIR as the period of the limitation as provided u/s 468 of Cr.P.C. will not be applicable to the offences allegedly disclosed in the crime.

13. The applicants relied on the fact that they have sold one plot from the said property to Chandrakala w/o Krantikumar Sharma in 1983 and respondent no. 2 was attesting witness to it. In this regard, we find that, respondent no. 2 had executed a Power of Attorney in favour of applicant no. 1 – Bharat Singh. He has alleged that, he had fiduciary relations with Bharat Singh as he was his guide and he has taken its undue advantage. Besides, a representation was made to him that his share in the land will not be affected by the said transfer and therefore he has signed the said deed as attesting witness. We *prima facie* find that, the fact that respondent no. 2 has signed the said sale deed in favour of his wife executed by applicants no. 1 to 3 by itself is not sufficient to establish the case of transfer of interest of respondent no. 2 in the land in favour of applicants no. 1 to 3. The effect of such document is a matter of appreciation at the

time of trial.

14. The technical objections raised are that, respondent no. 2 had filed report to the Superintendent of Police on 24.04.2013 and Superintendent of Police had conducted inquiry and recorded statements and thereafter took a decision not to register FIR. We find that, Superintendent of Police had no right to conduct such inquiry that too for a period of 4-5 months. The report was received by him on 24.04.2013 and the inquiry was conducted for a long period. If the allegations made by respondent no. 2 disclose a cognizable offence, Superintendent of Police should have directed the concerned Police Station Officer to register the FIR and investigate (as distinguished from making inquiry) the crime. It is well settled that, the inquiry prior to registration of FIR has to be a summary inquiry in appropriate cases to be completed within 48 hours. It cannot be continued for months together. There is no written order of Superintendent of Police that no FIR was to be registered. If there is no such order, respondent no. 2 gets no opportunity to challenge the same.

15. It is pertinent to note that, if the FIR is registered and the crime is investigated, the police are bound to submit report u/s 173 either of sufficient evidence or of deficient evidence and thereafter it

is for the Judge to decide whether such report should be accepted or whether the cognizance of offence should be taken. In this regard, we rely upon *Abhinandan Jha and ors. Vs. Dinesh Mishra, AIR 1968 SC 117*. If Superintendent of Police makes inquiry then it is not according to the procedure as he cannot exercise the powers of Judicial magistrate to come to the conclusion that there was no sufficient evidence disclosing cognizable offence.

16. Another ground raised is that, Id. Magistrate has rejected the prayer for direction to register the FIR. We find that, the said order was passed on two technical grounds viz. firstly FIR was not supported by affidavit as per directions in *Priyanka Shrivastava & Anr. vs State of Uttar Pradesh & Ors. (2015) 6 SCC 287*. Secondly, it was also observed that, the sanction to prosecute the public servant was not obtained before making such prayer. In that case respondent no. 2 tried to prosecute the Police Inspector of Bhagyanagar as well, besides applicants no. 1 to 3. In view of the above fact, the Id. Magistrate ought not to have made any comments on merits of the matter and should have simply dismissed the application on the technical grounds. Any observations made by him regarding other merits of the case cannot be taken into consideration when the application itself was held not tenable.

17. On merits, it was argued that the complaint is false and many misleading facts are stated therein and the principles of estoppel is applicable.

18. We find that, once the FIR is registered, it is for the Investigating Officer to carry out investigation and then to submit report u/s 173. The said report need not be always disclosing sufficient evidence. The Investigating Officer has power to submit reports as 'A', 'B' or 'C' Summary. It is for the Investigating Officer to conduct investigation and submit a report about truth or falsity of the allegations made in the FIR. This court in exercise of powers u/s 482 of Cr.P.C. cannot enter into the subject of deciding truth or falsity of the facts stated in the FIR.

19. Apart from above facts, we also find that the powers u/s 482 of Cr.P.C. can be exercised only for the purpose of preventing miscarriage of justice or preventing abuse of process of the court. In the present case, in the light of the facts stated herein above, we find that, *prima facie* respondent no. 2 has a share in the land of 4 acres & 8 gunthas jointly purchased by him and applicants no. 1 to 3. Applicants No. 1 to 3 are trying to deprive him of his share in the

land. There is no material whatsoever to show that he has been paid any consideration for the said share. In the light of these facts, this is not a fit case for invoking powers u/s 482 of Cr.P.C. In this regard, we rely upon **Amit Kapoor Vs. Ramesh Chander, (2012) 8 SCC 460** wherein it is held as under:

“27.15. *The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.*”

20. However, we find that, applicants no. 4 and 5 are mere purchasers. They have purchased some part of the land by registered sale deed dt. 28.02.1992 from applicants no. 1 to 3. There is nothing on record to show that they were aware about the interest of respondent no. 2 in the said land. There is no material to show any conspiracy or common intention between applicant nos. 1 to 3 on one side and applicants no. 4 and 5 on the other side. Applicants no. 4 and 5 may not have verified the title as is generally expected from the purchaser but, purchasing a land by them in such a situation only from applicants no. 1 to 3 cannot be sufficient to hold any criminal mind or any *mens rea* on their part to commit any offence. As far as rights of applicants no. 4 and 5 vis-a-vis respondent no. 2 is concerned, we find that it is a civil dispute.

21. The observations made in this order are *prima facie* in nature and made for deciding this application. Those should not be used for influencing the judicial officers conducting any proceedings relating to this FIR.

22. Respondent no. 2 being advocate was permitted to appear as party in-person. After following procedure, we had allowed him to argue in-person. We are constrained to observe that he has misused liberty granted to him and has made wild allegations against advocate Shri. Katneshwarkar, who was conducting the case on behalf of the applicants. It is expected from the lawyer to safeguard the interest of his clients. The filing of a document by him which is treated as irrelevant by the High Court is not at all any misconduct or contemptuous act on the part of advocate - Katneshwarkar. Respondent no. 2 is hereby put on notice that he should not make such allegations and if he indulges in such practice, the concerned courts will be at liberty to refuse him permission to conduct the case in person. With these observations, we pass the following order.

ORDER

- (1) Criminal Application is partly allowed.

- (2) FIR at C.R. No. 294/2016 registered at Bhagyanagar Police Station, Nanded for offences u/s 420, 464, 471 r/w 34 of IPC is quashed to the extent of applicants no. 4 and 5 only.
- (3) Criminal Application No. 816/2017 stands rejected so far as applicants no. 1 to 3.
- (4) Rule made partly absolute accordingly.

[A. M. DHAVALE]
JUDGE

[S. S. SHINDE]
JUDGE

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