

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

CRIMINAL APPLICATION NO. 1375 OF 2017

1. Sachitanana s/o. Bapurao Pande,
Age : 41 years, Occ. Agriculture,
R/o Deshpande Galli, Latur,
Tq. & Dist. Latur.
2. Pawan s/o. Bapurao Pande,
Age : 26 years, Occ. Agriculture,
R/o Deshpande Galli, Latur,
Tq. & Dist. Latur.
3. Fahimoddon Fayazoddin Sayyad,
Age : 46 years, Occ. Business,
R/o Bagwan Galli, Lal Godown,
Latur, Tq. & Dist. Latur.
4. Irfan Nisar Sayyad,
Age : 25 years, Occ. Business,
R/o 12 number pati, Shyam Nagar,
Latur, Tq. & Dist. Latur.
5. Aslam Akramsahab Momin,
Age : 27 years, Occ. Business,
R/o Sahawali Mohalla, Latur,
Tq. & Dist. Latur.

... **APPLICANTS**

Versus

1. The State of Maharashtra
Through the Police Station Officer,
Vivekanand Chowk Police Station,
Latur, Dist. Latur.

2. Salim Rasulsab Maniyar,
Age: 43 years, Occ. Business,
R/o Gouspura, Scrap Market Road,
Latur. Tq. & Dist. Latur.

... **RESPONDENTS**

WITH
CRIMINAL APPLICATION NO. 1376 OF 2017

1. Sachitanana s/o. Bapurao Pande,
Age : 41 years, Occ. Agriculture,
R/o Deshpande Galli, Latur,
Tq. & Dist. Latur.
2. Pawan s/o. Bapurao Pande,
Age : 26 years, Occ. Agriculture,
R/o Deshpande Galli, Latur,
Tq. & Dist. Latur.
3. Fahimoddon Fayazoddin Sayyad,
Age : 46 years, Occ. Business,
R/o Bagwan Galli, Lal Godown,
Latur, Tq. & Dist. Latur.
4. Irfan Nisar Sayyad,
Age : 25 years, Occ. Business,
R/o 12 number pati, Shyam Nagar,
Latur, Tq. & Dist. Latur.
5. Aslam Akramsahab Momin,
Age : 27 years, Occ. Business,
R/o Sahawali Mohalla, Latur,
Tq. & Dist. Latur.

... **APPLICANTS**

Versus

1. The State of Maharashtra
Through the Police Station Officer,
Vivekanand Chowk Police Station,
Latur, Dist. Latur.
2. Mohammad Kamil Hunsainsab Maniyar,
Age: 37 years, Occ. Business,
R/o Near Kubba Masjid, Galli No.02,
Hatte Nagar, Latur,
Tq. & Dist. Latur.

... **RESPONDENTS**

WITH
CRIMINAL APPLICATION NO. 2282 OF 2017

1. Irfan Nisar Sayyad,
Age : 25 years, Occ. Business,
R/o 12 number pati, Shyam Nagar,
Latur, Tq. & Dist. Latur.
2. Aslam Akramsahab Momin,
Age : 27 years, Occ. Business,
R/o Sahawali Mohalla, Latur,
Tq. & Dist. Latur.
3. Sachitanana s/o. Bapurao Pande,
Age : 41 years, Occ. Agriculture,
R/o Deshpande Galli, Latur,
Tq. & Dist. Latur.
4. Pawan s/o. Bapurao Pande,
Age : 26 years, Occ. Agriculture,
R/o Deshpande Galli, Latur,
Tq. & Dist. Latur.
5. Fahimoddon Fayazoddin Sayyad,
Age : 46 years, Occ. Business,
R/o Bagwan Galli, Lal Godown,
Latur, Tq. & Dist. Latur.

6. Salim Mohammad Yusuf Momin,
Age : 42 years, Occ. Business,
R/o Sahawali Mohalla, Latur,
Tq. & Dist. Latur.

7. Sayyad Khadar Haidar Raheman,
Age : 37 years, Occ. Business,
R/o Soygaon, Tal. Ambajogai,
Dist. Beed.

... **APPLICANTS**

Versus

1. The State of Maharashtra
Through the Police Station Officer,
Shivaji Nagar Police Station,
Latur, Dist. Latur.

2. Nagorao s/o. Bhujangrao Patlewad,
Age: 53 years, Occ. Service,
R/o Sub-Registrar Office No.2,
Latur, Tq. & Dist. Latur.

3. Shrikant Sonawane,
Age: Major, Occ. Assistant District
Registrar, Class-I, Latur
R/o Collector office, Latur,
Tq. & Dist. Latur.

... **RESPONDENTS**

Dr. Tawshikar Swapnil D., Advocate for the Applicants.
Mr. V.M. Kagne, A.P.P. for the Respondent/State.
Mr. Rajendra S. Deshmukh, Advocate for Respondent No.2.

**CORAM : S.S. SHINDE &
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING THE JUDGMENT : 07.11.2017
DATE OF PRONOUNCING THE JUDGMENT : 12.12.2017**

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JUDGMENT: (*Per Mangesh S. Patil, J.*)

. Rule. Rule is made returnable forthwith. With the consent of the parties, matter is heard finally.

2. These applications have been filed under Section 482 of Cr.P.C. seeking quashment of the three F.I.Rs which according to the applicants suffer from the vice that the alleged offences are the same and *inter alia* arise out of the same set of allegations. Since most of the parties are same and similar arguments have been advanced on behalf of the parties, we propose to dispose of these applications by this common judgment.

3. Shortly stated, the factual matrix is as under:

(a) Applicant nos. 1 and 2 in Criminal Application nos. 1375 of 2017 and 1376 of 2017 are the original owners of the land Survey no. 128/A of Latur Town ad-measuring 3 Hectare 49 Are. By a registered sale deed dated

06.08.2005 they sold a portion ad-measuring 1 Hectare 21 Are out of that land to one Nagnath Baburao Shendge. Said Shendge then sold that land to M/s. Maniyar Constructions, Latur, a partnership firm of which the respondent no.2 in Criminal Application no. 1375 of 2017 is a partner. It appears that the said firm then got layout of the land approved. The plot nos. 40 to 43 were then gifted by that firm to one Chand Pasha Rasul Sab Maniyar, Nasiruddin Ismail Maniyar and Ayub Pashamiya Maniyar in the year 2009, whereas, plot nos. 37, 44, 45 and 46 were sold by the firm to Sajanbi Husensab Maniyar, Ayeshabi and Ayaz Husensab Maniyar also in the same year. The names of these persons who had received the plots under gift deed/sale deed were duly mutated in the Municipal record of the respective plots.

(b) It appears that by the sale deed dated 27.06.2016 the applicant nos. 1 to 3 in Criminal Application nos. 1375 of 2017 and 1376 of 2017 sold a portion ad-measuring 415.42 sq.mtrs out of the same land i.e. land survey no. 128/A to the applicant nos. 4 and 5 in these two applications, describing said portion in the sale deed (page 21) as western side portion out of the plot no. 37 to plot no. 46 ad-measuring, north to south-447 feet and east to west-10 feet showing in the boundaries, to the east of this portion is the remaining portion of plot nos. 37 to 46. The respondent no.2 in these two applications

then lodged complaints with police on 14.09.2016 and 04.03.2017 which in verbatim are the same except the name of the persons acquiring the plots.

(c) In these F.I.Rs dated 14.09.2016 and 04.03.2017, it has been alleged that in spite of having sold the property earlier to Mr. Shendge in the year 2005, the applicant nos. 1 to 3 have forged documents and with a view to deprive them of their rights have once again sold the portion of these plots to the applicant nos. 4 and 5 in these two criminal applications by conspiring to forcibly enter in to the plots. On the basis of such information F.I.R. No. 55 of 2016 was registered on 14.09.2016 for the offences punishable under Section 420, 465, 467, 469, 471, 120-B read with Section 34 of the Indian Penal Code with Vivekanand Police Station, Latur and accordingly the offences were registered against the applicant nos. 1 to 5. Latter information was lodged on 04.03.2017 and F.I.R. No. 94 of 2017 was registered for the same offences with the same police station.

(d) One Nagorao s/o. Bhujangrao Patlewad, who was then serving as Sub-Registrar in the Sub-Registrar's Office at Latur also lodged an information with Shivajinagar Police Station, Latur on 24.04.2017 alleging that the applicant nos. 1 to 3 in Criminal Application nos. 1375 of 2017 and 1376 of

2017 by using a Guntewari certificate of the brother of the applicant no.1 executed the sale deeds in favour of applicant nos. 4 and 5 in these two applications. However, it was transpired when a complaint was lodged by the plot holders as mentioned above that the portion which these applicant nos. 1 to 3 have sold to Mr. Shendge was sold by showing that there was a 60 feet wide road to the west of that portion. In spite of such fact, without any land having been left for being sold between this portion and the western side road, these applicant nos. 1 to 3 have by using false documents sold the portions to the applicant nos. 4 and 5. On the basis of such report F.I.R. no. 142 of 2017 was registered for the offences punishable under Section 420, 465, 468 read with Section 34 of the I.P.C. and also under Section 82 of the Registration Act, 1908.

(e) Accordingly, the applicants in Criminal Application nos. 1375 of 2017 and 1376 of 2017 and two more persons named in F.I.R. no. 142 of 2017 are seeking quashment of the F.I.R. by filing Criminal Application no. 2282/2017.

4. We have heard the learned advocate for the applicants in all these proceedings. The basic thrust of the arguments of the learned advocate is to

the effect that going by the allegations in all the three F.I.Rs, the alleged offences can be said to have resulted on the same set of facts, though, the transactions have taken place at different times. According to the learned advocate, no two F.I.Rs can be allowed to be investigated on same set of facts. The learned advocate also referred to the decision in the case of **T.T. Anthony V/s. State of Kerala and Ors; AIR 2001 SC 2637** and the decision of the Division Bench of this Court to which one of us was a party (S.S. Shinde, J.) in the case of **Mohammad Hisham Osmani V/s. State of Maharashtra; MANU/0568/2017**.

5. The learned advocate for the applicants also strenuously argued that a purely civil dispute has been sought to be converted into a criminal case. The learned advocate pointed out that already Regular Civil Suit no. 62 of 2017 has been instituted by the applicant nos. 3 and 4 in Criminal Application nos. 1375 of 2017 and 1376 of 2017 in the Court of C.J.S.D., Latur (Exhibit-F), seeking perpetual injunction restraining the respondent no.2 in Criminal Application no. 1375 of 2017 from obstructing their possession by carrying out constructions over the portion of the land purchased by them from the applicant nos. 1 to 3 from Criminal Application nos. 1375 of 2017 and 1376 of 2017. The respondent no.2 also caused

appearance in the suit and the learned C.J.S.D. by the order dated 17.02.2017 directed the parties to maintain status quo in respect of constructions being carried out on the western side of the plot nos. 37 to 46. According to the learned advocate, annoyed by such an order slapped by the Civil Court the respondent no.2 Salim out of vengeance lodged the second F.I.R. no. 94 of 2017 with the same police station. However, ignoring the fact that on similar set of facts earlier F.I.R. no. 55 of 2016 was registered, a second F.I.R. has been registered. According to the learned advocate, even if the contents of the F.I.Rs are taken at their face value they do not disclose commission of any offence, the contents are inherently improbable and the F.I.Rs have been lodged with *mala fide* intention to wreck vengeance and these applications deserve to be quashed and set aside.

6. The learned A.P.P. vehemently opposed all the applications by submitting that merely because simultaneously a civil dispute is pending would not be a good ground to quash the proceedings since an element of criminality is also involved. Learned A.P.P. also submitted that the matter is still under investigation and it cannot be allowed to be stalled.

7. The learned advocate for the respondent no.2 in Criminal

Application nos. 1375 of 2017 and 1376 of 2017 submitted that in spite of the applicants having sold the property to one Mr. Shendge by showing that there was a road to the west of the property, the applicants hatched a conspiracy and have sold a portion of the same property under a subsequent transfer and thereby have deprived the respondent no.2 of their rights to the respective plots purchased by the purchasers. Even if a civil dispute is there, the fact that even the Sub-Registrar has found that the sale deeds executed by the applicant nos. 1 to 3 in favour of the applicant nos. 4 and 5 by forging documents and using them, clearly substantiates the allegations in the earlier two F.I.R. nos. 55 of 2016 and 94 of 2017. The learned advocate also submitted that there is no question of any vengeance. The learned advocate also submitted that since different plots have been sold to different persons, though, the facts are similar those are not same. F.I.R. no. 55 of 2016 has been lodged by the purchaser of the plot nos. 37, 44, 45 and 46, whereas, F.I.R. no. 94 of 2017 has been lodged by the purchaser of the plot nos. 41, 42 and 43. Therefore, the latter F.I.R. cannot be said to be second F.I.R. of the same offence. Thus, the learned advocate for the respondent no.2 prayed to reject these applications.

8. It is necessary to note at this juncture that these purchasers of the

plot, the respondent no.2 in Criminal Application nos. 1375 of 2017 and 1376 of 2017 are not made parties in Criminal Application no. 2282 of 2017, wherein, the F.I.R. no. 142 of 2017 has been lodged at the instance of Sub-Registrar from the office of the Sub-Registrar, Latur.

9. It is true that apparently similar set of facts and allegations have given rise to filing of the two F.I.R. nos. 95 of 2016 and 94 of 2017. However, even on the applicants own showing, the facts are similar but not the same. Admittedly, the applicant nos.1 to 3 had sold a portion ad-measuring 1 hectare 21 R to M/s. Maniyar Constructions and later on M/s. Maniyar Constructions have disposed of plot nos. 37 to 46 to various persons either by way of gift or sale. It is, therefore, apparent that each one of these transferee would feel agitated by the transaction by which the applicant nos. 1 to 3 sold a portion of the land from the same survey number to the applicant nos. 4 and 5. Considering the nature of the dispute, it is apparent that it would indeed require the investigation to be carried out to ascertain as to in what manner such subsequent transaction has been entered into by the applicant nos. 1 to 5 *inter se*. The fact remains that *prima facie*, the Sub-Registrar has also come to a conclusion that these applicants have committed forgery and have used forged documents to execute the sale deeds and to get them registered. We,

therefore, find this circumstance as a corroboration to the allegations made in the earlier two F.I.Rs. When a public officer has lodged the F.I.R. no. 142 of 2017 making series of allegations of forgery and use of forged documents and cheating, in our view the investigation deserves to be proceeded with and it would be hazardous to stall it abruptly merely on the ground that there is also a civil dispute pending between the parties.

10. In the case of **T.T. Anthony (supra)**, an incident of firing taking place at two places in connection with a visit of the minister to two places of the same town had resulted in registration of two crimes. Similarly, as a result of a report of the commission of inquiry ordered by the Government another crime was registered against the police officers and civil servants implicating all of them having committed offence of murder by ordering firing at the mob. It is in the peculiar set of facts that it was observed that the second F.I.R. which was relating to the same incident was liable to be quashed. In the matter in hand, as is observed above although the plots have been purchased by different persons and each one of them must be harbouring the same feeling about having been duped of their right to the property / plots purchased by them, they all have been attributing the same transaction by which the applicant nos. 1 to 3 in Criminal Application nos. 1375 of 2017 and

1376 of 2017 have sold a portion of land to the applicant nos. 4 and 5 therein. It is not that the applicant nos. 1 to 3 by independent transaction of forgery or cheating have committed different offences albeit the victims are different. Even going by the allegations in the F.I.R. nos. 55 of 2016 and 94 of 2017, the cause for filing of the information is nothing but the same transaction by which the applicant nos. 1 to 3 sold a portion of the land to applicant nos. 4 and 5. Therefore, it is apparent that the F.I.R. no. 94 of 2017 is nothing but a second F.I.R. and a consequence of the act which forms the basis of registration of first F.I.R. no. 55 of 2016. Therefore, applying the principle laid down in the case of **T.T. Anthony (supra)**, the F.I.R. no. 94 of 2017 is liable to be quashed. However, it is needles to state that it is liable to be quashed only on the ground that it is a second or subsequent F.I.R. and not on merits.

11. Consequently, the investigation carried out uptill now in F.I.R. no. 94 of 2017 can form part and parcel of the earlier F.I.R. no. 55 of 2016 and the investigation in F.I.R. no. 55 of 2016 can also be directed to include the allegations as well as the material collected in connection with F.I.R. no. 94 of 2017. Again, by F.I.R. no. 142 of 2017, the Sub-Registrar, Latur has *inter alia* alleged about the very same accused having prepared forged documents and

having used them to get the sale deed executed and thereby have cheated the officers of the Sub-Registrar's office. In doing so he has *inter alia* alleged that the sale deed executed by applicant nos. 1 to 3 in favour of the applicant nos. 4 and 5 in Criminal Application nos. 1375 of 2017 and 1376 of 2017 is also product of the same forgery. However, apart from such allegations he has also levelled certain other allegations involving couple of other persons. Therefore, in the peculiar facts and circumstances of the case, it would be a sheer duplication if simultaneously the earlier two F.I.Rs are allowed to be investigated along with F.I.R. No. 142 of 2017. It is in these peculiar set of facts, we deem it proper that instead of allowing such parallel investigations to go on to probe the offences, the investigation can be clubbed in the hands of a sole Investigating Officer by treating all these offences as part and parcel of the same transaction. In the circumstances, we pass the following order.

12. The Criminal Applications are partly allowed. The F.I.R. nos. 55 of 2016 and 94 of 2017 shall be treated as a part and parcel of Crime no. 142 of 2017. The Investigating Officer carrying investigation in crime no. 142 of 2017 shall simultaneously inquire into and investigate the allegations which form part of F.I.R nos. 55 of 2016 and 94 of 2017. The material collected during investigation of these two F.I.Rs shall be included in the investigation

of Crime no. 142 of 2017. Rule is made absolute in above terms.

13. It is made clear that we have not expressed any opinion on the merits of the alleged crimes. The observations made herein above are confined to the decisions of these applications only and shall not influence either the investigation or the trial.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]