

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

CRIMINAL APPLICATION NO. 3077 OF 2017

Anil s/o Jagdish Agrawal,
Age 58 years, Occu. Business,
R/o Flora Complex, Cannaught place,
Aurangabad

..Applicant

Versus

1. State of Maharashtra,
through CIDCO Police Station,
Taluka and District Aurangabad

2. Mr Damaji Gokul Patel,
Age 55 years, Occu. Business,
R/o 43, 44, 45, Gandhinagar,
Railway Station road,
Bansilal Nagar, Aurangabad

..Respondents

Mrs Rashmi S. Kulkarni, Advocate for applicant

Mr S.D. Ghayal, A.P.P. for respondent no.1

Mrs Monica Dahat, Advocate h/f Mr S.S. Patil, Advocate for respondent no.2

**CORAM : S.S. SHINDE AND
A.M. DHAVAL, JJ**

**DATE OF RESERVING
THE JUDGMENT : 8th August 2017**

**DATE OF PRONOUNCING
THE JUDGMENT : 18th August 2017**

JUDGMENT (Per A.M. Dhavale, J.)

1. Rule. Rule returnable forthwith. With the consent of parties, the matter is taken up for final disposal at admission stage.

2. This is an application under Section 482 of Cr.P.C. for quashing F.I.R. registered at C.R.No.418/2017 at CIDCO Police Station, Aurangabad for offences punishable under Sections 406, 420, 465, 468, 471 read with Sec. 34 of Indian Penal Code.

3. The facts relevant for deciding the present application may be stated as follows :

(a) By lease agreement dated 21.11.1996, Plot No.6 from Cannaught Place, N-5, CIDCO, Aurangabad was leased to Paritosh Marketing Private Ltd., for a period of ninety years. The said company constructed structures thereon. Hall Nos.1 and 2 admeasuring 1797 Square feet from building 'Ellora Complex' situated thereon is the subject matter of dispute.

(b) on 11.5.2001, Suryakant Gupta, as a Director of Paritosh Marketing Pvt.Ltd. executed agreement to sell of hall nos.1 and 2 in favour of Shankarlal Gunwani. Out of total consideration of Rs.6,26,200/-, Rs.4,26,000/- was advanced by Shankarlal Gunwani and remaining amount of Rs.2 lakhs was to be advanced at the time of registration. This agreement was unregistered. The applicant Anil Agrawal and one S.K. Gupta were witnesses to the same.

(c) On 29.8.2008, Shankarlal Gunwani executed Memorandum Of Understanding in favour of respondent no.2 Damaji Gokul Patel. It shows that out of consideration of Rs.20 lakhs, Rs.12 lakhs were paid.

(d) The disputed property was standing in the CIDCO record in the name of Paritosh Marketing Pvt. Ltd., but the taxes from the year 2011 onwards are paid by respondent no.2 - Damji. Meanwhile, Paritosh Marketing Pvt. Ltd., changed its name as 'Star Wire (India) Vidyut Pvt. Ltd.,' on 7.2.2007. The applicant's contention that it merged with Star Wire company is not supported by documents.

(e) Surendrakumar Gupta, on 20.1.2016, executed registered deed of assignment of the same property on behalf of Paritosh Marketing company in favour of the applicant Anil Agrawal. It shows that entire consideration of Rs.20 lakhs was paid at the time of agreement.

(f) As per investigation papers, Suryakant Gupta was Director of Paritosh Marketing Pvt. Ltd., up to 25.7.1998 and thereafter, he has resigned. Thus, he had no authority to sell the said property. Since the applicant was attesting witness to the transaction between Paritosh Marketing company and Shankarlal Gunwani, he was aware that the property was not belonging to Surendrakumar Gupta nor he was Director of the company. Before the agreement, the applicant Anil had issued a public notice dated 10.5.2007 and respondent no.2 Damaji had replied the same vide paper publication dated 14.5.2017 and had raised objections, still the deed of assignment was executed. The impugned F.I.R. was lodged on 3.6.2017 and it is registered for the offences punishable under Sections 406, 420, 465, 468, 471 read with sec.34 of Indian Penal Code.

3. Mrs Rashmi Kulkarni, learned Advocate for the applicant sought quashing of F.I.R. on following grounds :

(I) It is essentially a civil dispute;

(ii) There was no inducing nor entrustment to attract Sections 406 and 420 of Indian penal Code. There is delay of one and half years in lodging the F.I.R. This is an attempt to obtain specific performance through criminal machinery.

(iii) The agreement to sell was unregistered and it did not create any rights in favour of respondent no.2. It is a title dispute which can be decided by civil Court.

4. Learned Advocate for the applicant relied on **International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others, (2016) 1 SCC 348**, wherein it is discussed when provisions of Sections 420 are attracted.

5. She relied on **Asoke Basak Vs. State of Maharashtra & Ors., 2010 ALL SCR 2494** showing when provisions of Sections 405 and 409 of Indian Penal Code are attracted.

6. She also relied on **Dalip Kaur and ors., Vs. Jagnar Singh and Anr., 2009 (14) SCC 696**. It is held in this case that if the dispute between the parties was essentially civil dispute resulting from breach of contract, same would not constitute offence of cheating or criminal breach of trust.

7. Learned A.P.P. and learned Advocate for respondent no.2 have opposed the application. They have contended that Surendrakumar Gupta had no authority to enter into any transaction with respect to property of Paritosh Marketing Pvt. Ltd., and the applicant was aware of it. Still they have entered into agreement, which is a forgery. They have cheated respondent no.2 and they are trying to disturb his possession. Possession was with Shankarlal Gunwani and thereafter, it is with respondent no.2. Therefore, it is essential to investigate the

crime and find out the real facts. Therefore, no interference by way of invoking powers under Section 482 of Cr.P.C. is called for.

8. We have carefully considered the papers of investigation and rulings cited.

9. We agree that there was no inducement by the applicant and Surendrakumar Gupta to the respondent no.2 nor there was any entrustment with respondent no.2. Therefore, neither Section 420 nor Section 406 of Indian Penal Code would be attracted.

10. We find that the Director of Paritosh Marketing Pvt. Ltd. has executed agreement to sell in favour of Shankarlal Gunwani and he has executed memorandum of understanding in favour of respondent no.2. Respondent no.2 is in possession of tax receipts from 2011 onwards and claims to be in possession of the disputed property. At the time of considering the issue of invoking powers under Section 482 of Cr.P.C., the Court is bound to proceed on assumption that the facts stated in the F.I.R. and other documents are true and correct unless those are inherently found to be improbable.

11. The applicant was attesting witness to the agreement executed by Suryakant Gupta who was Director of Paritosh Marketing Pvt. Ltd. The fact that the said agreement to sell was unregistered will not make the said agreement non est. If the respondent no.2 is in possession of the suit property under the said agreement, he will have rights under the doctrine of 'part performance' of Section 53-A of the Transfer of Property Act.

12. If Paritosh Marketing Pvt. Ltd through Director Suryakant Gupta would have entered into agreement with the petitioner, it would have been a civil dispute, but here the agreement is executed by Surendrakumar Gupta, who had no authority on behalf of Paritosh Marketing Pvt. Ltd. and in spite of objections of respondent no.2 and in spite of knowledge about the previous agreement, the present applicant has purchased the said property. Prima facie, Surendrakumar Gupta and the present applicant have created false document with intent to cause injury to respondent no.2 and Paritosh Marketing Pvt. Ltd. Prima facie we find that the act of the present applicant falls under the definition of forgery under Section 463, punishable under Section 465 of Indian Penal Code. If the said agreement is used as a genuine, it will be an offence under Section 471 of Indian Penal Code. Therefore, we find that it will not be proper to quash the F.I.R. at this stage.

13. For the reasons stated above, we cannot accept that it is civil dispute simplicitor. Hence, we hold that the petition deserves to be dismissed. Hence, the following order :

ORDER

The Criminal Application is rejected. Rule is discharged.

The observations made herein above are prima facie in nature and confined to adjudication of the present writ application.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)