

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

CRIMINAL WRIT PETITION NO. 968 OF 2017

- 1] Mahemood Ilahi Khan S/o Manzoor Ilahi Khan,
Age:50 Years, Occ.: Business,
R/o Flat No.14, Haq Tower, Hamalwadi,
Railway Station, Aurangabad.
- 2] Kausar Parvin W/o Sayeed-UI-Haq Khan,
Age 55 years, Occu.Household,
R/o Friends Colony, Aurangabad. .. PETITIONERS

VERSUS

- 1] The State of Maharashtra
(Through The Investigation Officer,
Kranti Chowk Police Station,
Aurangabad)
- 2] Khushro Jahan Begum W/o.Khurshid
Ahmed Khan,
Age 65 years, Occ.Household
R/o Flat No.8, Haq Tower,
Hamalwadi, Railway Station,
Aurangabad .. RESPONDENTS

Mr.J.M.Murkute, Advocate for petitioners
Mr.A.P.Kale, AGP for Respondent No. 1.
Adv.M.C.Syed, for respondent No.2.

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

**RESERVED ON : 10/10/ 2017.
PRONOUNCED ON : 31/10/2017.**

JUDGMENT (PER MANGESH S. PATIL,J.) :

. Rule. Rule is made returnable forthwith. Heard finally with the consent of parties.

2] This is a Petition invoking the powers of this Court under Section 482 of Cr.P.C. for quashing of FIR bearing No.281/2017 registered with Kranti Chowk Police Station, Aurangabad on a complaint lodged by respondent no.2 for the offences punishable under Sections 420, 464, 468,471 read with 34 of IPC.

3] Shorn of details, the allegations in the FIR are to the effect that the respondent no.2 owned and possessed property bearing CTS No.19280 situated at Hamalwadi Railway Station, Aurangabad. The petitioners are developers and entered into an agreement with respondent no.2, for developing the property. An agreement was entered into on 1/6/2007 and as per the agreement, the petitioners had agreed to allot to the respondent no.2 Flats no.1,3,6 and 8 and Shops no.2,4 and 6 from the building to be constructed. They also agreed to pay her Rs.Ten lakhs in addition to such allotment of flats/shops. It is alleged that respondent no.2 realized that the shops were not constructed in accordance with approved building permission granted by the Municipal Corporation. It was revealed that the Municipal Corporation had issued notice to the petitioners for demolition of one of the shops since it was constructed in a margin

portion. Actually Shop no.6 appearing in the approved plan was sold to third persons and by deceiving the respondent no.2, shop no.5 was allotted to her contrary to the terms and conditions of the agreement. Thus, by not carrying out construction according to the building permission and as per the terms and conditions of the agreement entered into between petitioners and respondent no.2, the former have cheated the latter.

4] According to the learned advocate for the petitioners, the contents of the FIR clearly reveal that the dispute between the petitioners on the one hand and the respondent no.2 on the other is purely a civil dispute and in fact a Suit is pending in the Civil Court and the dispute cannot be given colour of a criminal proceeding. There is absolutely no criminality and purely a civil dispute has been sought to be brought into a criminal action.

5] Per contra, the learned advocate for respondent no.2 as well as learned APP submitted that though a civil suit is pending that does not take out the dispute from the purview of criminality. The petitioners have carried out construction which is inconsistent with the agreed terms and conditions and have also flouted building permission and apart from a civil liability they have incurred a criminal liability as well.

6] We have perused all the papers filed alongwith the Petition as well as affidavit in reply. We have also perused the police papers.

7] The dispute can either be a purely civil dispute or a criminal dispute. There can also be in an appropriate case a civil dispute bringing an aspect of criminality. In our considered view, this is a matter which falls in the latter category. Apparently there has been a

civil dispute inasmuch as the petitioners and the respondent no.2 have entered into a written agreement for development of a property and it has been specifically agreed *inter alia* that shop no.6 would be allotted to respondent no.2. Admittedly Regular Civil Suit No. 115/2016 has been pending. It is a Suit filed by the petitioners against Municipal Corporation impugning the notice served by the Corporation for flouting building permission. However, the matter does not apparently rest here. If the allegations in the FIR are to be believed and indeed those will have to be believed atleast at this juncture, the petitioners have apparently carried out some illegal construction and Municipal Corporation has already initiated penal action against them. It is highly improbable and therefore, unbelievable that any construction could have come up in breach of the building permission without active role played by the petitioners. Obviously if some illegal construction has been carried out by the petitioners in executing the work agreed upon between them and the respondent no.2, it can certainly be prima facie said that she has been deceived within the meaning of Section 415 of the Indian Penal Code. In these circumstances, we are satisfied that the allegations in the FIR prima facie make out offences registered against the petitioners even by applying the guidelines laid down by Supreme Court in the case of State of Haryana V/s Bhajanlal; AIR 1992 S.C. 604 which read as under :

“108] In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be

exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines of rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1] Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2] 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.

3] 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.

4] 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.

5] 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.

6] 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, providing efficacious redress for the grievance of the aggrieved party.

7] 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.”

8] The instant case does not fit into any of these categories. Therefore the petition is liable to be dismissed. Needless to mention that the observations made hereinabove are made only to the extent of decision of this matter and shall not preclude the petitioners in availing the suitable remedy for discharge, if so advised at an appropriate stage.

9] The Petition is rejected. The Rule is discharged.

(MANGESH S. PATIL,J.)

(S.S.SHINDE ,J.)

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