

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

CRIMINAL APPLICATION NO. 6412 OF 2017

Juman Hasan Hilabee,
Age: 35 years, Occ.: Businessman,
R/o Indra Nagar, Garkheda Parisar,
Aurangabad.

...APPLICANT

Versus

1. The State of Maharashtra
Through P.I., Jawahar Colony
Police Station, Aurangabad.
2. Aadesh S/o Pradeep Kummar Lohade,
Age: 28 years, Occ.: Businessman,
R/o Ranjangaon, Tal. Gangapur,
Aurangabad.

... RESPONDENTS

with

CRIMINAL APPLICATION NO. 6414 OF 2017

1. Juman Hasan Hilabee,
Age: 35 years, Occ.: Businessman,
R/o Indra Nagar, Garkheda Parisar,
Aurangabad.
2. Saba Hasan Hilabee,
Age: Major, Occ.: Housewife,
R/o As above.
3. Agban Khaled Chous,
Age: Major, Occ.: Unemployed,
R/o As above.

...APPLICANTS

Versus

1. The State of Maharashtra
2. Aasha Pradeep Kummar Lohade,
Age: 50 years, Occ.: Business,
R/o Shenpunji Ranjangaon,
Tal. Gangapur,
Dist. Aurangabad.

... RESPONDENTS

Mr. Pathan Hasrat Khan, Advocate for the Applicant.
Mrs. D.S. Jape, APP for Respondent-State.
Mr. M.N. Shaikh, Advocate for Respondent no.2.

**CORAM : S.S. SHINDE &
MANGESH S. PATIL, JJ.**
DATE : 27.11.2017

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

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

2. These are applications filed under Section 482 of the Code of Criminal Procedure for quashing the complaints which have resulted in registration of crimes, bearing F.I.R. No. 87/2017 for the offence punishable under Section 452, 504, 506 and F.I.R. No. 249/2017 for the offence punishable under Section 420, 467, 468, 504, 506 and 34 of the Indian Penal

Code both of which are registered with Jawahar Nagar Police Station, Aurangabad. The former is lodged at the instance of one Aadesh Pradeep Kumar Lohade who is respondent no. 2 in Criminal Application no. 6412/2017 and the other is lodged at the instance of his mother Asha Pradeep Kumar Lohade. Since the applicants and the original informants have reached to an amicable settlement, the applicants and the respondent no. 2 are seeking quashment of the crimes on the ground that the continuation of the proceedings would be an exercise in futility.

3. We have heard the learned Advocate for the applicants as also the learned Advocate for respondent no.2. They have referred to the decisions in the case of **Gian Singh Vs. State of Punjab and another; 2012 (10) SCC 303** and in the case of **Narinder Singh & Others V/s. State of Punjab and Anr; (2014) 6 SCC 466**, as also the Division Bench decisions of this Court in the case of **Jagdish Suresh Shirsath V/s. State of Maharashtra and Anr. in Criminal Application No. 1934 of 2017 dated 03.05.2017** and in the case of **Mukesh Baburao Pawar and Ors. V/s. The State of Maharashtra and Anr. in Criminal Application No. 6093 of 2013 dated 24.09.2014**. According to the learned Advocates for the parties, since the dispute was

essentially of civil nature and as the parties have arrived at an amicable settlement, it would be an exercise in futility, if the prosecution is allowed to go ahead.

4. In F.I.R. No. 87/2017 it has been specifically alleged that the mother of the informant had purchased the plot, wherein, three rooms have been erected. Her relative was staying in the premises, however, he died a couple of months before lodging the complaint and when she went to the house, she noticed that the accused i.e. applicant in Criminal Application no. 6412 of 2017 was occupying the house. On being asked as to what right he had to occupy the premises he had abused and threatened the informant. The F.I.R. was registered for the offence punishable under Section 452, 504, 506 of the Indian Penal Code.

5. The other F.I.R. bearing no. 249/2017 was registered when the mother of the informant in the earlier complaint lodged information alleging that after purchasing the very same premises they had let it to a person on monthly rent. However, the applicants in Criminal Application no. 6414 of 2017 forcibly evicted the tenant. When she inquired with them about such eviction they claimed to have purchased the premises and pointed out the

forged documents. When she and her husband asserted their right to the premises they threatened and abused them. On the basis of such complaint the F.I.R. was registered for the offences punishable under Section 420, 467, 468, 504, 506 and 34 of the Indian Penal Code.

6. The learned A.P.P. submitted that since the allegations in the F.I.R. are serious, the dispute is not personal alone and cannot be quashed. According to the learned A.P.P., the offence of preparing false documents and using them for the purpose of cheating are serious offence affecting public policy. Therefore, simply because the parties have amicably settled the matter that would not take these cases out of the purview of criminal liability and allowing such crimes to be quashed when the legislature had not made them compoundable would be endorsing illegality.

7. We have carefully examined the peculiar facts and circumstances of these matters. Apparently, the informants are claiming to have purchased the premises but there are no documents of title recognisable in law. In the memo of compromise, it is mentioned that one Radhakisan Upadhye was the original owner of the premises, which he had mortgaged with Juman Hasan Hilabee who happens to be the applicant in Criminal Application no. 6412 of

2017, by way of security of an amount of Rupees Six Lakhs. Now by virtue of this compromise the original informant never apparently agreed to clear the dues and in lieu thereof the applicant in Criminal Application no. 6412 of 2017 has acknowledged to have received the amount and has handed over the possession of the premises to the informants. Conspicuously, even this document styled as mortgage deed is unregistered. There are no documents of title available with either of the parties to *prima facie* demonstrate their validity and legal title to the premises. All these circumstances, clearly makes out a very murkier state of affairs. Complaints are lodged for serious offences which are not compoundable and now the huge amount is being paid apparently under the pretext of the repayment of loan secured by the mortgage of the premises without there being a registered deed of mortgage, which is compulsorily registrable under relevant law .

8. It is necessary to note that it has been laid down in the case of **Gian Singh and Narinder Singh (supra)** that in matters which are not compoundable, the F.I.R. can be quashed unless it is not repugnant to the public policy. In our considered view, above-mentioned circumstances clearly show that the conduct of the parties is not *bona fide* and transactions which

are not legally acceptable are sought to be done circuitously. We are also apprehensive of the fact that by endorsing such permission the High Court would be endorsing illegal transactions and we do not wish to do that.

9. In the result, both the criminal applications are liable to be rejected.

10. The applications are rejected. The rule is discharged.

[MANGESH S. PATIL, J.]

[S. S. SHINDE, J.]