

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 430 OF 2010

- 1) Matin Ahmed S/o Iqbal Ahmed,
Age: 35 years, Occu: Agri.,
R/o Gadi, Sillod, Taluka Sillod,
District Aurangabad.
- 2) Abdul Salim S/o Abdul Riyaz Deshmukh,
Age: 62 years, Occu: Agri.,
R/o As above.
- 3) Iqbalmiya S/o Abdul Sirajmiya Deshmukh,
Age: 62 years, Occu: Agri.,
R/o As above.

... APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through City Police Station, Sillod,
District Aurangabad.
- 2) Shaikh Majid Shaikh Sattar,
Age: 45 years, Occu: Business,
R/o. Sajid Tower, Bilal Nagar, Sillod,
Taluka Sillod, District Aurangabad.

... RESPONDENTS

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Mr. Santosh S. Jadhavar, Advocate for Applicants.
Mrs. D. S. Jape, APP for Respondent No.1 / State.
Mr. J. V. Deshpande, Advocate for Respondent No.2.

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CORAM : **T. V. NALAWADE &
K. L. WADANE, JJ.**

DATE : 19th July, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of FIR bearing M. Case No.4 of 2010, registered with City Police Station, Sillod, District Aurangabad, for the offences punishable under Sections 420, 406 and 34 of the Indian Penal Code.

2 Both the sides are heard.

3 Miscellaneous proceeding was filed by Respondent Shaikh Majid before the Judicial Magistrate First Class, Sillod and in that proceeding, order of investigation was made by the Judicial Magistrate First Class, Sillod under Section 156 (3) of the Code of Criminal Procedure. There is dispute between the Applicants on one side and Shaikh Majid on other in respect of some portion of land survey No.94/1 situated at Sillod town.

4 It is the case of the Complainant that the disputed land was purchased by Complainant and four persons including the present Applicants in the year 1995. They wanted to develop the land

and sell the plots to make money. In all 128 plots were prepared. It is the contention of the Complainant that to see that the transactions are made smoothly and everybody is not required to remain present at the time of sale of plots, power of attorney was given in favour of the Complainant and one more owner like Ramesh Hattikar on 30th December, 1996. It is contended that this power of attorney was used for some time and then all the five owners of the land made one more power of attorney on 11th December, 1997 in favour of Complainant and Ramesh Hattikar. This power of attorney was registered.

5 It is the case of Complainant that after registration of the power of attorney, Accused Nos.1 and 2 Matin and Abdul came to him and they said that they would give away the rights of ownership in favour of Complainant for consideration. It is contended that the Complainant gave Rs.5,50,000/- to each of these two Accused and on 18th December, 1997, one agreement was executed by these two Accused persons in his favour in presence of witnesses. It is contended that due to the document dated 18th December, 1997, no right was left with Accused Nos.1 and 2 in the land, but in spite of that, Accused Nos.1 and 2 sent notice to him to inform that they had

cancelled the power of attorney and they also published such notice in daily newspaper on 10th July, 2009. It is contended that these Accused then filed suit in the Court of Aurangabad and the Court has granted the relief like *status-quo* in the suit. It is the case of Complainant that by taking aforesaid steps, the Accused have committed the offence of cheating and misappropriation.

6 The learned counsel for Applicants submitted that the dispute between the parties is of civil nature and the Civil Court is considering that dispute and the Civil Court has already granted relief of *status-quo*. It was submitted that only due to the order made by the Civil Court, FIR was given and the purpose behind the FIR is to pressurize the Applicants. It was submitted that the Applicants have not admitted that they have relinquished their rights in the land and they have approached the Civil Court for possession of their separate portion.

7 The aforesaid submissions show that the ownership of the Applicants in the disputed land is not disputed. The right could not have been given on simple paper by the Applicants. It is clear that they will be taking such stand in the Civil Court and further it is their

contention that they have not signed on the document, which is called as relinquishment document by the Complainant. As the dispute is pending in the Civil Court and it is of aforesaid nature, this Court holds that it will be abuse of process of law if the Applicants are made to face the trial for the aforesaid offences. In the result, the following order is passed:

ORDER

- I. The application is allowed.
- II. Relief is granted in terms of prayer clause (B).
- III. Rule is made absolute in those terms.

[K. L. WADANE, J.]

[T. V. NALAWADE, J.]

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