

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

CRIMINAL APPLICATION NO. 917 OF 2018

1. Sayyad Nurul Salim S/o Sayyad Nurul Rashid,
Age 40 Years, Occu: Business,
R/o House No.1/9/18/A,
Choti Masjid, Jaysingpura,
Aurangabad, Dist. Aurangabad.
2. Sayyad Nurul Rashid S/o Sayyad Nurul Bakha,
Age 75 Years, Occu: Pensioner,
R/o House No.1/9/18/A,
Choti Masjid, Jaysingpura,
Aurangabad, Dist. Aurangabad.
3. Sajid Khan S/o Akbar Khan,
Age 45 Years, Occu: Business,
R/o House No.1-10-16,
Jaysingpura, Aurangabad,
Dist. Aurangabad.

... APPLICANTS

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Begumpura Police Station,
Aurangabad.
2. Shambhudeo s/o Wamanrao Rajbhoj,
Age 71 Years, Occu: Pensioner,
R/o House No.1-9-80/3,
Jaysingpura, Aurangabad.

... RESPONDENTS
(R-2 Orig. Complainant)

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Mr. A. S. Shelke, Advocate for Applicants.
Mrs. R. V. Dasalkar, APP for Respondent No.1 / State.
Mr. N. B. Patekar, Advocate for Respondent No.2 (Appointed).

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CORAM : **T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 25th September, 2018.

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

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of FIR No.225 of 2017, registered with Begumpura Police Station, District Aurangabad, for the offences punishable under Sections 420, 465, 468, 471 read with 34 of the Indian Penal Code and Sections 3(1)(F)(R) and (S) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3 The crime is registered on the basis of report given by Respondent No.2, Shambhudeo Rajbhoj. Incident in question took place on 11th November, 2017 and FIR was given on the same day at 21:10 hours.

4 Allegations are made by the first informant that the Applicants created some false record like document of transfer, which is shown to be notarized and thereby they have committed the aforesaid offence. It is his contention that he was owner of five plots from Gat No.86 of Mitmita Shivar having area of 5156.98 square feet. It is his contention that he sold these plots to Accused Nos.1 and 3 for consideration of Rs.4,00,000/- on 27th January, 2011. It is contended that out of the total amount of consideration, amount of Rs.75,000/- was given by Accused No.1 in cash and he gave the cheque of Rs.3,25,000/- drawn on Maharashtra Rural Bank, Aurangabad. It is contended that Accused No.1 had requested to wait for some time and then deposit the cheque for encashment and accordingly, after some time the cheque was deposited. It is contended that the cheque bounced as direction was given by Applicant No.1 to stop the payment and he had informed that the cheque was missing. It is contended that in statutory notice, the defence was taken that the cheque was not issued in favour of Complainant and it was missing cheque.

5 A case is already filed by the first informant under Section

138 of the Negotiable Instruments Act against Applicant No.1. It is contended that on 8th April, 2017 at 19:00 hours, when he was returning home from University gate, all the Accused intercepted him, gave him abuses by taking the name of his caste, which is scheduled caste and gave threats of life. It is contended that the Applicants / Accused are relatives of one corporator, Afsar Khan and so they are showing courage to do anything. It is contended that false document was noticed by him during trial of case filed against Accused No.1 by him.

6 The learned counsel for Applicants drew the attention of this Court to the first report given by the Complainant on 11th April, 2017. In that report, allegations were made only as against Applicant No.1 in respect of incident dated 8th April, 2017. Even the presence of other Applicants was not mentioned for that incident. Thus, the names of other two Applicants were added subsequently.

7 The learned counsel for Applicants drew the attention of this Court to the record like document titled as agreement of sale, copy of power of attorney and copy of deposition of the first informant in a case filed under Section 138 of the Negotiable Instruments Act.

The evidence in that case is given by the first informant and the aforesaid record show that the first informant had purchased the aforesaid five plots and the documents dated 29th October, 2003, were of the nature of power of attorney and affidavit. It appears that registration of sale transaction was not possible and so such documents were executed. It is not disputed that some document was executed by first informant in favour of present Applicants and that can be seen from the contents of FIR itself. There is copy of agreement dated 27th January, 2011 showing that under this document, amount of Rs.5,00,000/- was accepted by the first informant and he had sold the property in favour of Applicants. This document was confronted with the first informant in Criminal Case No.4346 of 2015 filed under Section 138 of the Negotiable Instruments Act. In the cross-examination, he admitted that the sale transaction was made by him and the document was notarized. This document was confronted to him and he admitted the execution of the document in favour of Applicants. These admissions were given on 30th November, 2016. The FIR was given in November, 2017. When there was such admissions in favour of Applicants, there was no necessity for them to create the dispute or quarrel with the first

informant. Surprisingly, the first informant has requested the Court in aforesaid criminal case to send the cheque to handwriting expert for comparison of the handwriting of Applicant No.1.

8 In the case which is pending before the Judicial Magistrate First Class, the dispute raised by the first informant that the consideration amount of Rs.3,25,000/- was not given and for that cheque was given can be decided. In that matter, the Applicants have produced the disputed document also and so the entire dispute can be decided in the said matter. It is clear that only to pressurize the Applicants and to get something, report is given by the first informant against the Applicants. It will be misuse of process of law, if the case is filed against the Applicants for the aforesaid offences and they are made to face the trial. In the result, the following order is passed:

ORDER

- I. The application is allowed.
- II. Relief is granted in terms of prayer clause (A).
- III. The fees of the appointed counsel is quantified as

Rs.3,000/-. It is to be paid through the High Court
Legal Services Authority.

IV. Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI, J.]

[T. V. NALAWADE, J.]

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