IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1647 OF 2018

Sandeep Sahebrao Agre,
Age 40 years, Occupation Business,
R/o Plot No. 43, Town Center, C-3,
CIDCO, Aurangabad
Tq. Dist. Aurangabad. ...Applicant

Versus

1) The State of Maharashtra,
Through P. S. Cidco, Aurangabad.

2) Laximan Parbhatrao Ghuge,
Age 68 years, Occupation Retired,
R/o Town Center, C-3,
Plot No. 43, CIDCO,
Aurangabad. ...Respondents

Mr. G. J. Kore, Advocate for applicant.
Mr. S. J. Salgare, Addl. Public Prosecutor, for respondent No.1/ State.
Mr. S. J. Salunke, Advocate for respondent No.2.

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

DATE : 07-09-2018.

ORAL JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. Rule, Rule made returnable forthwith by consent of both parties and matter is finally heard.

2. Present application has been filed by original accused by

invoking inherent powers of this Court under Sec. 482 of Code of Criminal Procedure for quashment of First Information Report (FIR) vide Cr. No. 133 of 2018 lodged with CIDCO Police Station, Aurangabad, by respondent No.2, with allegations of offence punishable under Sec. 420, 406, 468, 469, 471 of Indian Penal Code.

3. Respondent No. 2 is the informant. He is a retired Government Servant from Irrigation Department. He has two daughters and two sons. His sons are dealing in computer and automobiles business. He had purchased a plot admeasuring 2800 sq. Ft in the year 1992 with his friend Sahebrao Dagduji Aagre. They had made common construction on the same. After the construction, both of them are residing separately in the portions got allotted to them. The plot stands in the name of both the purchasers. His friend Sahebrao expired in 2001. The original documents of the plot were with Sahebrao. Applicant, who is the son of Sahebrao went to the house of informant at Town Center, Sector C-3 and informed that loan of Rs. 1,20,00,000/- has been sanctioned by DCB Bank, Kanti Chowk branch, Aurangabad to him on the plot and therefore, he is in need of signature of informant on the papers. He showed the letter from the Bank to him. After going through that letter, it was realized by the informant that applicant/ accused had raised loan without the consent of informant from Dombivali Nagari Sahakari Bank,

Samarthnagar Branch, Aurangabad in the past. He became suspicious about applicant and therefore, made inquiry with CIDCO office. It was revealed that applicant had forged the signatures of informant and prepared NOC to obtain loan from said Bank. When he made inquiry with applicant, at that time he asked for pardon. Applicant had forged the signature and sought NOC again from CIDCO. Applicant has also created some other false documents and used them as genuine in order to obtain loan. Therefore he says that as the accused has mortgaged the original documents of the plot and obtained loan to the tune of Rs.1,20,00,000/-; he has been cheated. On the basis of this report, offence is registered for the offence punishable under Sec. 420, 406, 468, 469 and 471 of Indian Penal Code.

4. Applicant contends that he has not committed any offence. There is delay in lodging FIR. The incident had occurred between 30-12-2009 to 25-05-2016; however, the FIR has been lodged on 26-04-2018. His father had purchased part of the plot jointly with informant. He is residing in norther half portion. There is no note of partition between his father and informant. He runs a business at Walunj MIDC. He was in need of money for his business, therefore, approached Bank for loan. He has repaid the loan taken from DCB Bank. Informant had given consent for loan on the northern side of the plot. He had signed the said document. However, the relations

between them became strained since 2016. Informant is now dening his consent with ulterior motive. He had pledged only the northern portion and not the entire plot. Therefore there is no question of any loss or gain to anybody. Though he had applied for NOC to CIDCO for obtaining loan from DCB Bank, NOC was not given by informant. Intimation notice was given to the informant and to the applicant by CIDCO office. The contents of the FIR will not disclose any ingredient of the offence. He therefore, prayed for the quashment of the FIR.

5. Informant/ respondent No. 2 has filed affidavit-in-reply and objected the application. He has reiterated the contentions in the FIR again and therefore, they are not repeated. He has produced certain documents with his reply.

6. Heard learned Advocate Shri. G. J. Kore for applicant, learned A. P. P. Shri. S. J. Salgare for State and learned Advocate Shri. S. J. Salunke for respondent No. 2. Perused the documents filed by applicant, respondent No. 2 and police papers. All of them have argued in support of their respective contentions.

7. It is not in dispute that informant and his friend Sahebrao had purchased the property admeasuring 2800 sq. Ft in CIDCO. Northern half was taken by Sahebrao and Southern half came to the share of informant. It is also not in dispute that original documents of the plot were in custody of Sahebrao. Consequently they are in

possession of applicant. It is also not in dispute that applicant had taken loan from the Bank to the tune of Rs.1,20,00,000/- by mortgaging plot. It is the say of informant that applicant had forged his signature for getting the said loan and had mortgaged the property without his consent/ signature. A letter has been produced by applicant, which is issued by DCB Bank on 19-09-2016 stating that applicant had mortgaged Northern side of plot No. 43 admeasuring 130 sq. ft. The said letter was addressed to Administrator, CIDCO requesting him to issue NOC. It appears that applicant had contacted informant for giving signature for NOC in May 2016. At that time itself, informant had carried the impression that applicant has raised the loan on the basis of plot, without his consent. He made inquiry and came to know that applicant had obtained NOC on the basis of forged signature of the informant. The first and the foremost fact is that there is delay of about 2 years in lodging the report. The FIR has been lodged on 26-04-2018. There is no explanation for the said inordinate delay. If we peruse the FIR, in the last paragraph it is said that forged signatures are made and loan is obtained since 30-12-2009 to 25-05-2016. If this fact is considered, then delay is huge.

8. It has been brought on record that the applicant has repaid the loan, which he had taken from Dombivali Nagari Sahakari Bank. Applicant intended to take loan from DCB Bank. When he had clearly

stated that he would be mortgaging Northern half only, it appears that the Bank is still ready to give him loan. His intention is clear. He has no intention to cheat informant. He has no intention to mortgage Southern half, which has gone to the share of informant. It appears that there is no document of partition between them, but with mutual understanding they are using half portion. Therefore, one of the basic ingredient of the offence, which have been invoked in this case i.e. 'mens area' is absent in this case. If there is only one original document of purchase of entire plot and no further document of partition, then applicant can be said to be justified in giving the original to the Bank at the time of loan. It was not necessary for him to obtain no-objection from informant to raise loan on his Northern side of plot.

9. The facts further disclose that as per the informant, applicant had forged his signatures to obtain NOC from CIDCO. It is to be noted that informant has not shown what 'wrongful gain' and 'wrongful loss' has been caused to him because of the alleged act of applicant. In order to prove offence under Sec. 420, 468, 469 and 471 of IPC, what should be proved is the 'dishonest intention'. Sec. 24 of Indian Penal Code defines 'Dishonesty' as "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'". Sec. 25 of Indian Penal Code defines word

"fraudulently" as "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise". Sec. 23 of Indian Penal Code defines "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled. "Wrongful loss".—"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled. Gaining wrongfully, losing wrongfully. A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property. If we consider these definitions, ingredients of the said offences and the facts of the case, we can see that there is absolutely no wrongful loss to informant. His property was not at all mortgaged, nor it was put to stake while obtaining loan. It appears that now the relations between applicant's family and informant have become strained and therefore, after such a long period, informant has lodged the FIR with ulterior motive. Therefore, when ingredients of offence are not attracted, it would be futile exercise to ask the applicant to face trial. Hence, case is made out for the exercise of inherent powers of this Court under Sec. 482 of Code of Criminal Procedure to quash the FIR. Hence, following order :

ORDER

1. Application is hereby allowed in terms of prayer clause 'B'.

2. Rule is made absolute in those terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.