

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

Criminal Application No.3568 of 2016

* Rameshwar S/o Birdichand Munot,
Age 60 years, Occupation : Business,
R/o Ganpati Nagar, Jalgaon,
Taluka & District Jalgaon. .. **Applicant.**

Versus

- 1) The State of Maharashtra,
Through Police Inspector,
Ramanand Police Station,
Jalgaon, Taluka & Dist Jalgaon.
- 2) Chandrashekhar s/o Ramnarayan Mantri,
Age 46 years, Occupation : Business,
R/o 161/1, Adarsh Nagar,
Jalgaon, Taluka & Dist Jalgaon. .. **Respondents.**

Shri. N.E. Deshmukh, Advocate, for applicant.

Shri. S.J. Salgare, Additional Public Prosecutor, for
respondent No.1.

Shri. A.S. Barlota, Advocate, for respondent No.2.

With

Criminal Application No.3607 of 2016

* Rajendra s/o Anil Mayur,
Age 74 years,
Occupation : Business,
R/o 303, Shivaji Nagar, Jalgaon.
Presently residing at Flat No.2,
Madhupuspa Apartment,
Bhavsar Colony, Dhule. .. **Applicant.**

Versus

- 1) The State of Maharashtra,
Through Police Station Officer,
Jalgaon City Police Station,
Jalgaon, Taluka & Dist Jalgaon.
- 2) Chandrashekhar Ramnarayan Mantri,
Age 46 years,
Occupation : Business,
R/o 162-1/1, Adarsh Nagar,
Jalgaon, Taluka & Dist Jalgaon. .. **Respondents.**

Shri. Shailesh P. Brahme, Advocate, for applicant.

Shri. S.J. Salgare, Additional Public Prosecutor, for
respondent No.1.

Shri. A.S. Barlota, Advocate, for respondent No.2.

With

Criminal Application No.3608 of 2016

- 1) Gopal Ramkisan Nagala,
Age 54 years,
Occupation: Business,
R/o 114, Shani Peth, Jalgaon,
Taluka & District Jalgaon.
- 2) Kishor Ramkisan Bhavsar,
Age 54 years,
Occupation: Business
R/o Block No.1, Shinu Bungalow,
B.J. Nagar, Jalgaon,
Taluka & District Jalgaon.

- 3) Ashokkumar Bastimal Khivsara,
Age 58 years,
Occupation: Business,
R/o Block No.7, JDCC Bank Colony,
B.J. Nagar, Jalgaon,
Taluka & District Jalgaon. .. **Applicants.**

Versus

- 1) The State of Maharashtra,
Through Police Station Officer,
Jalgaon City Police Station,
Jalgaon, Taluka & Dist Jalgaon.
- 2) Chandrashekhar Ramnarayan Mantri,
Age 46 years,
Occupation : Business,
R/o 162-1/1, Adarsh Nagar,
Jalgaon, Taluka & Dist Jalgaon. .. **Respondents.**

Shri. Shailesh P. Brahme,, Advocate, for applicant.

Shri. S.J. Salgare, Additional Public Prosecutor, for
respondent No.1.

Shri. A.S. Barlota, Advocate, for respondent No.2.

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

Date: 02 JULY 2018

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

- 1) All the three proceedings are filed under
section 482 of the Code of Criminal Procedure for the
relief of quashing of F.I.R.No.27/2015 dated 17-2-2015

registered in Ramanand Police Station Jalgaon for offences punishable under sections 420, 120-B, 406, 34 etc. of Indian Penal Code. It appears that initially one officer of the Revenue Department, office of Land Records, was also made accused. This Court allowed the proceeding filed by the said officer Ashok Damdu Chavan and the F.I.R. filed against him is quashed and set aside. Charge-sheet is filed against remaining six accused persons.

2) F.I.R. was given by Chandrashekhar Mantri, resident of Jalgaon. It is his contention that his wife Shital had purchased Survey Nos.311/1A, 311/1B and 311/1K from Rameshkumar Munot, resident of Jalgaon under sale deed dated 2-5-2013. It is contended that on Survey No.311/1A there were 5 plots and on southern side of these plots, there was D.P. road of the width of 18 meters and beyond that railway line was shown. It is contended that considering the area sold in the sale deed his wife was expecting that under the sale deed she would get right to enjoy the entire portion shown in the sale deed. It is contended that afterwards they realised that the

aforesaid D.P. road of width of 18 meters shown in development plan was not of the width of 18 meters but it was of the width of 12 meters and immediately after that there was railway compound wall. It is the contention of the complainant side that as the width of the D.P. road is less by 6 meters she cannot enjoy the entire portion shown to be sold to the complainant side and they will be required to give away the portion having width of 6 meters area from all the five plots. It is contended that to ascertain this position the land was got measured through survey office and the survey map was shown to the vendor Munot. It is contended that he contacted Khandesh Builders also as the property had come to Munot from Khandesh Builders but they gave evasive answers. It is contended that due to their approach and as he wanted to dispose of the plots he got corrected area of the disputed 5 plots from Survey No.311/1A to show that the DP road having width of 18 meters was left.

3) It is the contention of the complainant side that he approached Munot and Khandesh Builders with the aforesaid grievance and requested them to return the

money in respect of the less area but they gave threats to him and refused to return money. After that he gave report to police.

4) Criminal Application No.3568/2016 is filed by Munot, the vendor of the complainant side. Criminal Application No.3607/2016 is filed by Rajendra Mayur, a Director of Khandesh Builders and Criminal Application No.3608/2016 is filed by other Directors of Khandesh Builders.

5) Both sides have produced some record. There is copy of first approved plan. It is not disputed that applicant Rajendra Mayur was a Director of Khandesh Builders when the application was moved for sanction of the lay out plan and for converting the land for N.A. use. These steps were taken by Mayur in the year 2001. Accordingly, the layout was sanctioned and the land was converted to N.A. use. It was submitted for Mayur that he resigned from the post of Director in the year 2005 and so the case cannot be filed against him. Some record is produced to show that resolution was passed by the Board

of Directors and letter was sent to the authority created under the Companies Act. There is nothing to show that the change was noted in the register under the Companies Act. Further, there are specific allegations against Mayur that he had taken steps for approval of lay out plan and for conversion of the land for N.A. use. Though the officer from the Land Record who had sanctioned the lay out plan is not accused but allegations are made that by joining hands with the said officer Mayur created that record cannot be ignored. It is the case of the first informant that Mayur had prepared the aforesaid record showing the width of the road as 18 meters when no such space was available on that side, beyond the plots shown to be sold to the wife of the first informant. In view of these circumstances the relief cannot be granted to Mayur, applicant from Proceeding No.3607/2016. There is material to make out a case that false map was prepared and the wife of the first informant, complaint side is deceived.

6) The copies of the sale deeds executed in favour of Munot by Khandesh Builders dated 20-4-2013 and the

sale deed executed in favour of wife of the first informant show that, within 10 days of purchase, Munot executed sale deed. The learned counsel for the applicant submitted that in both the sale deeds there is a mention that on the spot one may not find D.P. road having width of 18 meters and so it cannot be said that the wife of the present first informant was deceived. This submission is not at all acceptable. When as per the approved plan specific area of each plot (Plot Nos.1 to 5) from Survey No.311/1A was shown and this area is shown to be sold under sale deed, it cannot be said it was informed to the purchaser that the purchaser was to get less area. When it is a case of false representation, directly or impliedly, principle that buyer should be aware and he should take necessary precautions cannot be used against the buyer. Further, when Munot had paid consideration of Rs.28.72 lakh, the wife of the first informant paid consideration of Rs.40 lakh within 10 days of the first sale deed for the same area. These circumstances are sufficient to make out a prima face case in respect of the allegations made against Munot and Khandesh Builders. The circumstance that Munot sold the property within 10 days and the aforesaid contents of

the sale deed create probability that they had hatched conspiracy and due to the mention in the aforesaid sale deed of aforesaid nature, the second purchaser was deceived.

7) The submissions made and the record show that it was necessary for the officers of the Land Records also to ascertain as to whether the developed area falls within restricted zone. It was necessary to ascertain as to whether the boundary of the developed area was beyond 183 feet from middle line of the railway line. Further there was railway property adjacent to Survey No.311/1A and so only after boundary of that property, the map could have been prepared. That was not done. When D.P. road of the width of 18 meters could not have been left on southern side, such road was shown in the development plan. Due to that the area of other plots could be shown more. These circumstances indicate nothing but a plan to deceive the purchaser. The parties are in the development business and so it can be said that everything was done by planning in advance. It is not in dispute that the first informant's family was required to make change in the

plan due to the aforesaid circumstances and less area was required to be shown in the aforesaid 5 plots. Thus, the family of the first informant sustained loss. It is already observed that Mayur was the person who had applied for approval of development plan and for getting N.A. permission. In view of these circumstances and as there is no other specific case of the applicants, this Court holds that relief claimed cannot be given to the applicants.

8) Learned counsel for the applicants placed reliance on the reported cases like:

(2013) 11 SCC 673 (Parmjeet Batra v. State of Uttarakhand);

(2011) 7 SCC 59 (Joseph Salvaraj A. State of Gujarat);

(2006) 6 SCC 736 (Indian Oil Corporation v. NEPC India Ltd.).

It was submitted that, the dispute is of civil nature and so power under section 482 of the Cr.P.C. needs to be used. Facts and circumstances of each and every case are always different. Relevant facts of the present matter are already quoted and they show that it was a planned act of the applicants and they were able to deceive the family of

the first informant by creating false record. Though civil action was also permissible for relief of setting aside the transaction or for compensation, criminal action is also tenable as there was false representation and there was creation of false record. So, the observations made in the cases cited supra are of no use to the applicants. In the result, all the applications are dismissed. Rule discharged. Interim relief is vacated. Learned counsel for the applicants requested for continuation of interim relief. It is refused.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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