

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3267 OF 2017

Poonamchand S/o Ramanand Mor
Age : 65 Years, Occu. Business,
R/o "Shakti Krupa", Deshmukh Wadi,
Pachora Tq Pachora Dist Jalgaon. ...Applicant.

Versus

1] The State of Maharashtra
Through, the Police Inspector,
Pachora Polie Station,
Dist. Jalgaon.

2] Sandip S/o Madhukar Borse,
Age : 35 years, Occu. Private Service,
R/o Galan Tq Pachora Dist. Jalgaon.
Presently R/o Vijaya Nagar, House
No. 30/B, Udhana, Hari Nagar,
Behind No. 2, Udhana,
Surat Tq & Dist. Surat (Gujarath State).Respondents

Mr. H. F. Pawar, advocate for applicant.
Mr. K. S. Patil, A. P. P. for respondent No. 1.
Mr. V. S. Khairnar, advocate for respondent No. 2.

**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 20th MARCH, 2018

JUDGMENT : (Per Smt. Vibha Kankanwadi, J.)

1. The present applicant has invoked the inherent powers

of this Court U/s 482 of Code of Criminal Procedure in order to get First Information Report vide CR No. 106/2017 registered with Pachora Police Station, Dist. Jalgaon for the offences punishable U/s 420, 406, 409, 465, 468, 120B of Indian Penal Code quashed and set aside.

2. The applicant has come with a case that he is an industrialist. He is also a Chairman of co-operative Industrial Estate at Pachora. He is having an Agricultural land in the nearby area of Pachora Taluka bearing Survey No. 150/2-A/1 and 150/2-A/2. Another land i.e. Gat No. 14 is at village Bhadgaon. He never sold his land by dividing it into the plots. He had not appointed any person as agent. He came to know that some persons from the vicinity of the village are intending to sale the plots under different schemes by name "Krishna Park", "Kanha Park", "Savariya Park", "Kiran Park". He had immediately published a public notice in "Daily Lokmat" Jalgaon Division of 23.1.2015 informing the general public that he has no connection whatsoever with the persons who were selling plots under the various schemes.

3. The applicant further states that he was surprised when he came to know about the registration of crime against him with Pachora Police Station, Dist. Jalgaon. The said First Information Report has been filed by respondent No. 2. The respondent No. 2 / informant had contended that Pachora is his native place and he purchased clothes from "Lal Swastik Kapad Dukan" occasionally. His relative Chudaman @ Bapu Bhagwan Patil serves with the said cloth

shop. When the informant had gone for purchasing clothes in 2012, Chudaman told him that one Poonamchand Ramanand Mor is selling plots by installments under the name "Krushna constructions". One Jayashri Ramesh Patil has purchased plot No. 97, 98, 99, 100 from Survey Gat No. 150/2A/1 and Survey No. 151/2A/2. It was also informed to him that she had paid 13 installments worth Rs. 1,17,000/-. But, since she was having some financial difficulty she intends to sale out the plots. Since the installments of the plot was Rs. 2250/- and the amount was to be paid with 60 installments, the informant i.e. respondent No. 2 decided to purchase the Plot from Jayashri Ramesh Patil. Agreement to that effect was executed between them on 19.4.2012. One Umesh Anil Nyati had signed the document on behalf of Poonamchand Ramanand Mor. Informant further says that he thereafter paid 47 installments worth Rs. 4,23,000/-. Thereafter, he got information that the scheme has been closed. When informant went to Poonamchand Mor to make enquiry about the scheme, it was told to him that he has not put the plots for sale. He has nothing to do with Umesh Nyati. The informant says that he realized that he has been cheated by Umesh Nyati, Poonamchand Mor and Jayashri Patil. When he asked for return of his amount it was refused. Hence, he lodged report.

4. On the basis of the said First Information Report, the applicant says that no offence can be made out against him. He has been falsely implicated and therefore, prayed for quashing the report.

5. The respondent No. 2 has been duly served. He appeared through Advocate. However, at the time of hearing the learned Advocate appearing for respondent No. 2 remained absent.
6. Heard learned Advocate Shri H. F. Pawar for applicant and learned A. P. P. Shri K. S. Patil for respondent No. 1 - State, and learned Advocate Shri V. S. Khairnar for respondent No. 2.
7. It has been submitted on behalf of the applicant that on the basis of the First Information Report it can be seen that no offence has been made out against the applicant. There was no representation or talks between the informant and the applicant directly. He is not signatory to the document that was executed. Therefore, when he has not received a single amount, he can not be held responsible even prima facie for any act.
8. The learned A. P. P. submitted that the matter requires to be investigated.
9. It is to be noted that the respondent No. 2 had filed the affidavit in reply. The contents of the same are nothing but the reproduction of the contents of the First Information Report and therefore, they are not repeated here. However, it is to be noted that alongwith affidavit in reply, the respondent No. 2 has filed certain documents. Those documents are in the nature of 7 x 12 Extract, Mutation entry, recent agreement and receipts issued by proposed Krushna Park. As per the contention of the respondent No.

2 those receipts have been issued by Umesh Nyati.

10. At the outset it is to be noted from the contents of the First Information Report that there was no direct dealing between the applicant and informant. The agreement which has been produced on record by respondent No. 2 states that it was executed between informant and Krushna Constructions Shri Umesh Nyati as well as Jayashri Patil. A copy of the proposed residential Layout Plan has also been produced. However, it does not bear anybody's signature. The mutation entry at page No. 32 says that the plots were purchased by Krushna Constructions through its partner Poonamchand Ramanand Mor i.e. present applicant. There was nothing else on record to show that Umesh Nyati was appointed by Krushna Construction. The mutation entry as well as consent letter appears to be in the name of Krushna Construction. However, all the receipts, those have been produced, appears to have been issued by Padmavati Land Developers and Company (Proposed) Krushna Park.
11. Unless Layout would have been sanctioned, the land can not have been divided in the plots and can not have been sold. The informant has not stated as to who has sanctioned the Layout of the plots and whether he had gone through all the documents which are necessary for a legal transaction before going ahead with the purchase of the plot. Therefore, unless the applicant would have discharged his duties and taken precaution, it can not be said that representation was made to him and in response to the representation, he has parted with his amount. In order to attract the offence

punishable U/s 420 of Indian Penal Code there should be intention to cheat since beginning. The contents of FIR do not show that there was any kind of intention to cheat on the part of the present applicant.

12. Since there is no evidence that the amount was paid by the informant to the present applicant, there is no question of misappropriation and therefore, ingredients of Sec. 406 of Indian Penal Code are not attracted. The present applicant is not a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent of the informant and therefore, ingredients of Sec. 409 of Indian Penal Code are also not attracted. The informant has not stated that which document has been forged by the applicant. In fact the document, that has been got executed by the informant, is from Umesh Nyati and Jayashri Patil. The present applicant was not at all in picture. Under such circumstance, there is no evidence regarding forgery of documents as well as criminal conspiracy. Under such circumstance, ingredients of Sec. 465, 468, 120B of Indian Penal Code are also not even, prima facie, attracted.

13. When the facts of the case do not indicate basic ingredients of the offence, then it would be fit case to quash the FIR. In this connection we would like to rely on the following principle laid down in **State of Haryana and Ors. V/s Bhajanlal and Ors., [1992 Supplement -1 Supreme Court Cases, 335]**, wherein it is held that :

"The following categories of cases can be stated

by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 CrPC can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not

constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can even reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and / or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

14. Therefore, applying the above said principle we find, this is a fit case where First Information Report against the applicant, deserves to be quashed and set aside.

Hence, following order;

ORDER

- i) Application is hereby allowed.
- ii) The First Information Report vide CR No. 106/2017 registered with Pachora Police Station, Tq. Pachora, Dist. Jalgaon registered for the offence punishable U/s 420, 406, 409, 465, 468, 120 B of Indian Penal Code is hereby quashed and set aside.

(SMT. VIBHA KANKANWADI)
JUDGE

(PRASANNA B. VARALE)
JUDGE

GGD/-