

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4561 OF 2014

- 1) Chandu Dhannu Ghochiwale,
Age 45 years, Occupation Agriculture,
R/o Ram Murti, Dist. Jalna.
- 2) Yusuf s/o Rashid Gaurve,
Age 32 years, Occupation Agriculture,
R/o Burhan Nagar, Dist. Jalna. ...Applicants

Versus

- 1) The State of Maharashtra,
Through Police Inspector,
Sadar Bazar Police Station,
Jalna Dist. Jalna.
- 2) Gopi Kishan Jaju s/o Rameshwar Jaju,
Age 62 years, Occupation Agril. &
Business, R/o Bharat Nagar, Jalna
Dist. Jalna. ...Respondents

Mr. Inamdar Khaja Akramoddin h/f Mr. S. S. Kazi, Advocate
for applicants.

Ms. V. S. Choudhary, Addl. Public Prosecutor, for respondent
No.1 / State.

Mr. M. A. Thorobole, Advocate for respondent No.2.

**CORAM : T. V. NALAWADE &
SMT.VIBHA KANKANWADI. JJ.
DATE : 08-10-2018.**

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

1. Present application has been filed by original accused for invoking inherent powers of this Court under Section 482 of Code of Criminal Procedure for quashing and setting aside First Information Report vide C. R. No. 237 of 2014 dt. 24-07-2014 registered with

Sadar Bazar Police Station, Jalna for the offence punishable under Section 384, 324 and 34 of Indian Penal Code.

2. Respondent No. 2 had filed written complaint with the police station stating that he is an agriculturist and businessman. He has son by name Anup, who had purchased land belonging to applicant No. 1 vide registered sale-deed No. 354/2013. Respondent No. 2 was proceeding on 22-07-2014 from his residence at Bharat Nagar towards MIDC, when he was obstructed by applicants. They told informant that they would implicate his son in money lending offence. If he want that his son should not be implicated, then he should give Rs. 2 lakhs to them, otherwise they would suffer. Applicants had caught hold of neck of the informant. He was rescued by his driver. While leaving, the applicants again gave threat and called upon him to give amount. It was stated that thereby the applicants had tried to extort money from him. On the basis of said complaint, FIR was lodged.

3. Applicants are contending that the said FIR is false and based on concocted story. Anup - son of the informant is doing unlawful money lending business. Applicant No. 1 had taken loan of Rs.10 lakhs from him and at that time, he had executed sale-deed by way of security. It was assured that after the repayment of the money with interest, Anup would reconvey the land to him. Entire amount

was repaid by applicant No. 1 by the end of 30-01-2013. Applicant No. 2 is the witness for the repayment of amount. Applicant No. 1 had requested Anup several times to reconvey his land, but he was not inclined. Hence, applicant No. 1 had informed the said fact to Tahsildar, Talathi, Collector and Superintendent of Police, Jalna by his letter dt. 03-07-2014. Anup had given a proclamation on 02-01-2013 regarding the land of applicant No. 1, which was objected by him on the very next day. The transaction between applicant No. 1 and Anup is not out and out sale, but it was by way of security to the loan transaction. Informant had conspired with his son and gave false report. Therefore, applicants have prayed for quashing the FIR.

4. Heard learned Advocate Mr. Inamdar Khaja Akramoddin h/f Mr. S. S. Kazi, learned A. P. P. Ms. V. S. Choudhary for respondent No. 1-State and learned Advocate Mr. M. A. Thorbole appearing for respondent No. 2. All of them have argued in support of their respective contentions. Respondent No.2 has objected the application by filing affidavit-in-reply. It is nothing but denial of the contents of application and reiteration of contents of FIR; hence, contents thereof are not reproduced. Perused the police papers.

5. At the outset, it can be seen that contention of the respondent No. 2 is supported by his son Anup, who was admittedly not present at that place. Other two statements are that of driver, Munim and

servant of informant. Perusal of spot panchnama shown by informant would show that the alleged incident had taken place on road. His house is not near to the spot. Informant has not given any kind of background as to how he was knowing applicant No. 2 and how he could have common intention to commit any crime with applicant No. 1. Intentionally it appears that the background has been suppressed. Copy of document of sale-deed has been collected. Applicant No. 1 contends that the nature of the said transaction is not out and out sale, but as security. Applicant had filed complaint with different authorities stating that Anup is doing unlawful money lending business. Those complaints are made prior to the FIR. Thus, when except the servants of informant nobody is supporting the incident, then with such kind of evidence, it would be unjust to ask the applicants to face the trial. Case is made out by the applicants to exercise inherent powers of this Court, as the FIR appears to have been filed with mala fide intention. Hence, following order:

ORDER

1. Application is allowed.
2. Relief is granted to the applicants in terms of prayer clause "B".
3. Rule is made absolute in those terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.