

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4414 OF 2017

1. Rajlaxmi d/o. Dhairyashil Jadhav,
Age 20 years, Occu. Student,
R/o. Harshavardhan Building,
Adalat Road, Aurangabad.
2. Dhairyashil s/o. Raibhan Jadhav,
Age 47 years, Occu. Agri. & Business,
R/o. Harshavardhan Building,
Adalat Road, Aurangabad.
3. Dattu s/o. Bhikan Kale,
Age 30 years, Occu. Driver,
R/o. Navjeevan Colony Hudco,
Aurangabad.

....Petitioners.

Versus

1. The State of Maharashtra
Through Cantonment Police
Station, Aurangabad.
2. Ashok s/o. Vithal Kasule,
Age 45 years, Occu. Business,
R/o. Plot No. 31, Near Water Tank,
Baban Nagar, Padegon,
Aurangabad.

....Respondents.

Mr. N.S. Ghanekar, Advocate for applicants.

Mr. S.J. Salgare, APP for respondent No. 1/State.

Mr. Sunil Kakde, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.**

DATED : JULY 5, 2018.

JUDGMENT : [PER T.V. NALAWADE, J.]

- 1) Rule. Rule is made returnable forthwith. By consent,
heard both the sides for final disposal.

2) The proceeding is filed under section 482 of Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.' for short) for relief of quashing of F.I.R. No. 194/2017 registered with Cantonment Police Station, Aurangabad for the offences punishable under sections 420, 406, 504, 34 etc. of Indian Penal Code. The crime is registered on the basis of report given by respondent No. 2 Ashok. This Court has carefully gone through the contents of the F.I.R., notice of exchange by both the sides and other record like agreement described as Memorandum Of Understanding (MOU).

3) The first informant is a developer. It is his contention that due to accused Dattu Kale, who is working as driver on the vehicle of Dhairyashil Jadhav, other accused, he came in contact with Dhairyashil Jadhav. Dhairyashil was owner of land Gat No. 109 and the area of this land was 44 R. Dhairyashil wanted to develop this property, but he wanted to see that the land was in the name of his daughter Rajlaxmi, other accused and then the property was developed. They had some sittings and negotiations and then a document was executed on 25.8.2015. As per the agreement, the property was transferred in the name of Rajlaxmi by Dhairyashil. As per the agreement, the amount which was required to be spent for conversion of land to non agricultural purpose and also for preparing

of lay out plan was to be spent by the first informant. As per the agreement, if the plots prepared were sold below the price of Rs.2,000/- per sq. ft., the first informant was to get commission of 25% of the cost of the plots and if the plots were sold for the price of more than Rs.2,000/- per sq. ft., then the first informant was to get commission of 20% in the price of the plots.

4) It is the case of first informant that he spent for converting the land to non agricultural purpose, for transfer of the land in the name of Rajlaxmi and for the preparation of lay out plan. He has contended that he was required to spend around Rs.60 lakh for the development of the property and when the time came of the disposal of the plots, the accused persons, applicants said that they would give only 10% commission and not 25% as agreed by them.

5) The MOU shows that out of 44 R., the area of 34 R. was to be developed. Whether the price was proper or not was to be decided by Rajlaxmi and not by the first informant. It was necessary to get the approval of owner in respect of every purchaser and only after that, the plots were to be sold. The notice issued by the first informant is on the record and in the notice, he has made similar allegations. Notice is dated 8.12.2016. This notice was replied by the present applicants and the reply shows that they were not disputing

that the percentage mentioned in the agreement was to be given to the first informant. They had contended that the market price of the plots was more than Rs.2,000/- per sq. ft. and it was around Rs.2,700/- to Rs.3,000/- per sq. ft. They had contended that only to get more commission, the first informant was trying to say that the plots need to be sold below Rs.2,000/- per sq. ft. and he wanted to deceive the owner. They had given offer that it was open to the first informant to purchase all the plots at the rate of Rs.2,700/- per sq. ft. and from that amount, it was open to the first informant to deduct 20% commission as per the agreement.

6) Some record is produced by the first informant to show that amount was spent by him and some amount was given to the accused also. That circumstances cannot be considered in the present matter. The aforesaid contents of agreement and the notice and the reply show that the accused are ready to act as per the agreement and they have also given aforesaid offer to the first informant. It can be said that the terms and conditions of the agreement are favourable to the accused persons and even the amount which was required to be spent for development was not mentioned. It will be required for the first informant to prove that particular amount was spent by him if he fails to specifically enforce the agreement mentioned above. That can be decided by Civil Court

and on the basis of aforesaid circumstances, it is not possible to presume that there was intention to deceive on the date of agreement. Further, even on the date of F.I.R. the accused persons were ready to act as per the agreement as mentioned above.

7) One more circumstance was argued for the first informant. It was submitted that application was given by the accused persons to bank to get loan by mortgaging the property. On that, submissions are made for the applicants that though in the past, after expiry of the period given in the notice by the accused, such application was moved, due to subsequent development like giving of the F.I.R., they have withdrawn their proposal of loan and no money is taken from the bank as loan. It was submitted that the mortgage document was executed. Mortgage document was subsequently released by the said bank and so, that circumstance also cannot be considered against the present applicants. It was submitted that if the first informant has some dispute with the applicants, then it is open to him to go to Civil Court. But, he has avoided to go to Civil Court and he want to use the criminal action to force the applicants to come to some settlement. There is force in this submission made for the accused. It will be abuse of process of law if the chargesheet is filed in the present matter and the applicants are directed to face the trial for aforesaid offences. The

dispute is of purely civil nature. In the result, the application is allowed. Relief is granted in terms of prayer clause 'B'. Rule is made absolute in aforesaid terms.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

SSC/