

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6775 OF 2017

Ashok Yeshwantrao Shinde,
Age 62 years, occupation Advocate,
R/o Bhokardan Tq. Bhokardan
Dist. Jalna.

...Applicant

Versus

- 1) The State of Maharashtra,
Through Police Station Officer,
Bhokardan Police Station,
Tq. Bhokardan Dist. Jalna.
- 2) Babasaheb s/o Dharma Pagare,
Age 30 years, occupation Agriculture,
R/o Bhokardan Tq. Bhokardan
Dist. Jalna.

...Respondents

Mr. V. D. Salunke, Advocate holding for Mr. P. P. More,
Advocate for applicant.

Mr. S. B. Pulkundwar, Addl. Public Prosecutor, for respondent
No.1/ State.

Mr. N. B. Patekar, Advocate for respondent No.2.

**CORAM : T. V. NALAWADE &
K. L. WADANE, JJ.
DATE : 15-06-2018.**

ORAL JUDGMENT (Per T. V. NALAWADE, J.)

1. This is an application filed under Section 482 of the Code of Criminal Procedure for relief of quashing First Information Report bearing No. 420 of 2017, dated 13-10-2017, registered with Bhokardan Police Station Dist. Jalna for the offences punishable

under Section 420, 120(B), 406, 467, 468, 471 read with 34 of the Indian Penal Code.

2. Heard both the sides.

3. The crime is registered on the basis of report given by one Babasaheb Dharma Pagare. He knew present applicant – Advocate Ashok Yeshwantrao Shinde from prior to 12-10-2017. Other accused – Rahul Ashok Shinde is a son of Ashok Shinde. Ashok Shinde works as Notary Public.

4. It is the case of Babasaheb Pagare that, prior to 12-10-2017 in the Court campus of Bhokardan, Ashok Shinde and Rahul Shinde had informed to him that, there were two properties like open plots situated at Walsa Dawargaon Tahsil Bhokardan and Belora Tahsil Bhokardan, and they were put up for sale. They had asked him as to whether he was interested in purchasing the two plots. Babasaheb had responded by saying that, he would consider the proposal. On 12-10-2017 at about 5.30 p.m. when he went to Bhokardan Court, accused Rahul Shinde again asked him about the plots. After that Rahul Shinde said that, there were notarized transfer documents with him. Babasaheb asked about the price and Rahul informed about the price. Rahul promised to see that, Babasaheb will get the plot of Walsa Dawargaon belonging to Raju Bhagaji Karhale for the consideration of Rs.40,000/- and the plot of

Belora belonging to Ankush Bajirao Kolhe for consideration of Rs.30,000/-. Rahul showed the notarized documents also and he said that there was other customer with him and Babashaheb should give the decision on the same day.

5. Babasaheb considered the offer and he thought that the price was less than the market price. After that also Babasaheb requested to reduce the price by Rs.5,000/- and Rahul Shinde agreed to it. Rahul Shinde said that, it was his responsibility to prepare document and get it notarized. He asked Babasaheb to give some amount as advance and he demanded the advance of Rs.20,000/-. Babasaheb handed over the amount of Rs.20,000/- to Rahul Shinde and after that Rahul handed over copies of agreement in respect of two plots to him and promised to see that, within two to three days, the plots were transferred in the name of Babasaheb.

6. On 13-10-2017 Babasaheb visited Walsa Dawargaon to make enquiry in respect of plot of Rajul Bhagaji Karhale. The persons of the said village informed that, Raju Karhale had died in the year 2014. When Babasaheb compared the copies of documents handed over to him, he realized that, the plot was shown to be sold to Raju Karhale under document dated 12-10-2017. He made more enquiry and he confirmed that, Raju Karhale had died on 20-12-2014. He collected death certificate of Raju Karhale.

7. Babasaheb then went to Belora to make enquiry in respect of plot of Ankush Bajirao Kolhe. Then he realize that, Sheshrao Shirsat was the owner of this plot and he had died 10 years back. When he made more enquiry he realize that, Ankush Kolhe was said to be owner had also died 02-03 years back. The document which was handed over to him was dated 12-10-2017. He realize that, both the documents (copies) given to him by Rahul Shinde were bogus documents and the persons who had allegedly executed the documents were not alive on the date of the execution. He approached police and gave report on 13-10-2017 against both Ashok Shinde and his son Rahul Shinde.

8. The papers of investigation were made available to this Court and investigation agency has found that there is substance in the allegations made by the first informant. The investigation revealed that, the stamp papers on which the aforesaid documents were written were not purchased by the persons who had executed the documents but they were purchased by the other persons who were sent by Ashok Shinde - present applicant. However, the record was created by the bond writer in the name of two deceased and they are also made accused. Relevant record of those stamp vendors is taken out by the police. The investigation revealed that bogus documents were prepared and the persons who had executed the

documents were not alive on the date of the execution. Copies of those documents are there in the papers of investigation, and they include death certificates of aforesaid persons.

9. The only contention which was made for the applicant by the learned counsel was that, police could not have registered crime in view of the provision of Section 13 of the Notaries Act, 1952 against the present applicant. He placed reliance on observations made by some High Courts on this point. The provision of Section 13 of Notaries Act, 1952 runs as under -

"13. Cognizance of offence. – (1) No Court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorized by the Central Government or a State Government by general or special order in this behalf.

(2) No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try an offence punishable under this Act."

10. Learned counsel placed reliance on some cases decided by this Court and also by other High Courts and they are as under -

- 1) 2005 (1) Bom. C.R. (Cri) 823, Chandmal Motilal Bora Vs. The State of Maharashtra,*
- 2) 2012 (3) Bom. C.R. (Cri) 611, Ayaz Ahamed Khan Vs. The State of Maharashtra,*

- 3) *2014 (3) Bom. C.R. (Cri) 30, Ayaz Ahamed Khan Vs. The State of Maharashtra,*
- 4) *Cri. W.P. 250 of 2015, Dr. Paayal Shrikant Chobe Vs. The State of Maharashtra, Decided on 16-10-2015,*
- 5) *Criminal Misc. Petition No.3630 of 2012, Banwari Lal Gupta son of Shri Prabhati Lal Vs. State of Rajasthan through P.P., decided on 06-04-2017.*

This Court has carefully gone through the observations made in aforesaid cases. They were mainly with regard to the functioning of Notary Public and the mistake committed by the Notary Public due to wrong identification of the person produced before the Notary Public by advocate who had signed the document to identify the said person. The facts of the present matter are altogether different.

11. In the present matter there are specific allegations against applicant and his son that they had informed that two plots were available for sale and they had handed over copies of previous transfer documents which were on stamp papers and which were simply notarized. Thus allegation is there against the applicant and his son that, they gave false promise, they used false documents and they made the first informant to give amount of Rs.20,000/- to them. Thus, the allegations make out the offence punishable under Section 420 of Indian Penal Code and it can be said that there is a

material to make out the other offences also. These acts of the applicant were not done for functioning as Notary Public. Further the papers of investigation reveal that, probably the documents were prepared at the instance of present applicant, as there are such statements. Due to these circumstances it cannot be said that the present applicant has a protection of Section 13 of Notaries Act, 1952. The acts were not done as notary public.

12. The learned counsel for the respondent No.2 – first informant placed reliance on some observations made by Hon'ble Apex Court in three reported cases as under -

1) *State of Rajasthan Vs. Dr. Rajkumar Agarwal and Another, AIR 2013 SC Pg. 847,*

2) *Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Ltd., AIR 2016 SC Pg. 4363,*

3) *Bhaskar Lala Sharma Vs. Monica and others, SCC 2014 (3) Pg. 383.*

The facts and circumstances of the each and every case are always different.

13. The investigation is still in progress and it appears that, anticipatory bail was granted to the present applicant by Sessions Court. It can be said that, due to the relief of anticipatory bail, the investigation is also hampered. In any case there is material of

aforesaid nature which is sufficient to make out prima facie case. It cannot be said that, false allegations are made against present applicant. Some record is produced to show that the first informant was involved in some litigation and proceedings but that record cannot be considered at this stage and the aforesaid contentions of first informant which have the support of some documents cannot be disbelieved at this stage.

14. Thus, it is not the fit case for giving the relief of quashing of the First Information Report. On the contrary thorough investigation is necessary so that the investigating agency is able to trace more such incidents. In this area such incidents are increasing day by day. In the result, application is rejected. Application is disposed of accordingly.

(K. L. WADANE)
JUDGE

(T. V. NALAWADE)
JUDGE

gawade/-.