

Nalawade

THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1833 OF 2017

Maulik Nandan Dixit and anr. ...Applicants.

Vs.

The State of Maharashtra and anr. ...Respondent.

Mr. Amit Desai, Senior Advocate i/by Mr. Aniket U. Nikam, Advocate for the Applicants.

Mr. Amit Palkar, APP. for the Respondent-State.

Mr. A.H.H. Ponda with Anand Singh, Mr. Murutza Kachwala, Mr. Aashdin Chivalwala and Shreya Mathur i/by Anand Singh for Respondent No.2.

CORAM : A.S.GADKARI, J.

DATE : 9th July, 2018

P.C.

1. The applicants were granted interim relief by an Order dated 13.10.2017 and were directed to attend the Investigating Officer as and when called, for the purpose of investigation.

2. Heard Shri. Amit Desai, learned Senior Counsel appearing for the applicant, Shri. Ponda, learned counsel appearing for the first informant and the learned APP. Perused the record of investigation.

3. The first information report is lodged in pursuance of the Order dated 14.6.2017 passed under Section 156(3) of the Code of Criminal Procedure by the learned Metropolitan Magistrate, Railway

Mobile Court, Andheri, Mumbai in Criminal Case No.18/SW/2017 filed by Shri. Mansoor Chunawala.

The first information report is lodged by the said complainant /informant Shri. Mansoor Abdul Qayum Chunawala.

4. It is stated that, in the year 1989, the family members of Shri. Chunawala formed a family trust namely M.R. Enterprises and likewise in the year 2002 a family trust namely MARS properties was established. The informant is managing trustee in both the said Trusts. The function/business of the said Trusts is to purchase properties and to give it on rental basis. That, the first informant has been duly authorized to lodge the complaint in that behalf.

It is stated that, in the year 2003, the said two trusts purchased a building namely 'Sirinity Building', Wing-C, situated at Oshiwara Village, Link Road, Andheri (W) from Romel Builders. The land beneath the said building is owned by MHADA and the said land was taken on lease for a period of 90 years by the said builder. After few days from the date of purchase of the said building by the said Trusts Shri. Nandan S. Dixit, Chairman and Managing Trustee of the

S. N. Dixit Education Foundation approached the informant and requested him to give the said building for conducting 'City International School' on rental basis. The said Trusts thereafter initially gave the said building from 1.11.2003 to 31.7.2006 on Leave and Licence basis by charging agreed consideration for the same. An agreement dated 4.11.2003 has been duly registered with the office of the Sub Registrar of Assurances, Bandra, Mumbai. At the time of execution of the said agreement Shri. Nanadan Dixit was the Managing Trustee and the applicants were also trustees of the said Trusts. The period of Leave and Licence Agreement was subsequently extended from 1.7.2006 to 30.6.2011 for a period of five years for the consideration mentioned in the agreement and subsequently the same was further extended from 1.7.2011 for a period of three years upto 30.6.2014. The said leave and licence agreement dated 2.9.2011 has been registered with the office of Sub Registrar of Assurances, Bandra, Mumbai. As the period of last agreement was to come to an end on 30.6.2014, the informant issued a notice dated 8.2.2014 to the applicants for vacating the said premises and for its

vacant and peaceful possession. As the said N. M. Dixit Education Foundation did not vacate the suit premises despite lapse of said agreement the Trusts of the informant filed a suit for eviction against the applicants and their education foundation Trust, bearing LE & C Suit No.189/2007/2014 in the Court of Small Causes at Bandra, Mumbai. That, the said N. S. Dixit Education Foundation and M. N. Dixit Education Foundation through the applicants and Shri. Nandan Dixit has filed a suit for declaration that they are tenants of the said suit premises against the Trusts of the informant in Small Causes Court at Bandra, Mumbai bearing RAD Suit No.309/2014 .

It is further stated that with a view to commit criminal breach of trust and cheating the applicants along with Mr. Nandan Dixit manufactured, forged/fabricated a Lease Deed dated 16.3.2006 for a period of 30 years thereby depicting that, from 1.7.2006 to 30.6.2036 the suit property has been given on lease to the Trusts of the applicants and the said document has been registered with the Sub-Registrar of Assurances bearing No. BDR-4/8479/2006. A copy of the said document was given to the informant by a person who is

a close confident of applicant No.2. The informant thereafter verified the said document of Lease Deed with the office of Sub- Registrar of Assurances at Bandra, Mumbai wherein it was revealed that, a document bearing No. BDR-4/8479/2006 dated 14.11.2006 is in fact a document of Mortgage Deed executed between M/s. Well Built Realtors Private Ltd. and Kapol Co-op. Bank Ltd. It is further stated that, in further enquiry it was also revealed that the applicants along with their father Shri. Nandan Dixit has submitted a bogus receipt of payment of stamp duty and registration charges dated 16.3.2006 thereby committing an act of cheating against the Government also.

It is stated that, after getting the said information from the concerned authorities the informant realized that the applicants along with Shri. Nandan Dixit have manufactured and fabricated the said bogus Lease Deed dated 16.3.2006 and it was done with a view to get affiliation from CISCE Board, New Delhi to the said 'City International School' conducted by N.S.Dixit Education Foundation and and M. N. Dixit Education Foundation of which the applicants are

trustees. In the premise, the first information report is lodged.

5. Mr. Amit Desai, the learned Senior counsel appearing for the applicants submitted that, the document in question is dated 16.3.2006 is not signed by the applicants and it is signed by the father of the applicants namely Shri. Nandan S. Dixit. He submitted that a charge of forgery cannot be imposed on a person who is not maker of the same . That, as held in plethora of cases, making of a document is different than causing it to be made. In support of his contention he relied on the decision of the Hon'ble Supreme Court in the case of Sheila Sabastian vs. R. Jawaharaj and anr. reported in 2018 SCC OnLine SC 522. He further submitted that there is nothing on record to suggests that, the applicants have actually affixed the alleged two signatures on the disputed documents. That, the material on record suggest that, the correspondence with the CISCE Board, New Delhi was done by the late father of the applicants who expired on 20.5.2013. He submitted that the complaint was filed by the informant with the police initially in early 2017 and the present FIR is belatedly lodged on 9.8.2017. That, the civil litigation pertaining to

the suit property is pending before the Small Causes Court at Bandra since 2014. He further submitted that the Trusts of the applicants have been given the suit property on leave and licence basis from the year 2003 onwards and there are series of leave and licence agreements entered into between the parties till 2.9.2011. He submitted that the Trusts of the applicants are in bonafide possession of the suit property and only with a view to evict the applicants from the suit property the present crime is registered by the informant. He further submitted that, the specimen signatures of the applicants have already been taken by the Investigating agency and therefore the custody of the applicants is not necessary for further investigation. He submitted that, the alleged document in question dated 16.3.2006 has surfaced on record for the first time in the year 2017 and therefore also the custody of the applicants is not necessary. He therefore submitted that the present application may be allowed and the applicants may be granted pre-arrest bail.

6. At the out set, it is to be noted here that, Rule No.4(g) of the Conditions For Provisional Affiliation Of Schools framed by the

Council For The Indian School Certificate Examinations prescribes that, in case of a Lease, the Lease Deed of the land/building should be duly registered before the concerned registration authority and should be for a minimum effective term of 30 years and in case the lease term is for less than 30 years, the Lease Deed should have an appropriate renewal clause upto a minimum of 30 years, is the cause germane for manufacturing and/or fabricating the document in question i.e. the Lease Deed dated 16.3.2006 in the present crime.

7. The Investigating officer has filed affidavit in reply dated 5.3.2018 placing on record the progress of investigation and it is stated that, the document in question i.e. Lease Deed dated 16.3.2006 allegedly registered with the office of Sub Registrar of Assurances at Sr. No. BDR-4/8479/2006 is in fact has not been registered with the said office and is not in existence. It is revealed during the course of investigation that a document bearing registration No. BDR-4/8479/2006 is in fact a Mortgage Deed dated 14.11.2006 executed between M/s. Well Build Realtors Pvt. Ltd. and Kapol Co-op. Bank Ltd. It is further revealed that, the receipt of

registration of document produced by the applicants is also not in existence and the said document is bogus, forged and fabricated document. It is further revealed that, the alleged payment of Rs.8,23,590/- by the applicant's Trusts has in fact not been paid to the Government. That, the rubber seals of Government authorities endorsed on the Lease Deed are also bogus and fabricated. It is further revealed during the course of investigation that the alleged lease deed is not signed by the informant and the signature therein is forged and fabricated. That, the said lease deed dated 16.3.2006 is submitted by the applicants with the said CISCE Board, New Delhi for getting the provisional affiliation and subsequently for permanent affiliation with the said Board.

It is to be noted here that, though the alleged lease deed was executed on 16.3.2006 its reference is lacking in the last Leave and Licence agreement dated 1.7.2011. That, the first informant has instituted suit before the Small Causes Court bearing LE and C Suit No.189/2007/2014 for eviction of the applicants. That, the applicants have also instituted a suit for declaring them as tenants

bearing RAD Suit NO.309/2014. If there would have been some substance in the contention of the applicants that, as a matter of fact the said lease deed was executed, the applicants would have certainly pleaded the said fact before the Small Causes Court and would not have suppressed the said document till its surfacing on record in the year 2017. Thus, there is every reason to draw an irresistible inference that, the document in question i.e. lease deed dated 16.3.2006 was manufactured by the applicants in connivance with their late father Shri. Nandan Dixit only for the purpose of initially getting the provisional affiliation and subsequently for permanent affiliation from CISCE Board, New Delhi.

8. This leads me to deal with the aspect of knowledge of the applicants about the existence of the said document in the year 2006 itself and their role in getting affiliation with the said CISCE Board, New Delhi by use by the said forged document dated 16.3.2006. It is to be noted here that, Form for provisional affiliation to the CISCE Board, New Delhi was submitted by the Trusts of the applicants on 12.4.2006. The applicants herein signed the said form

in their capacity as trustees of the said Trusts. The said lease deed dated 16.3.2006 has been annexed at Serial No.19 to the enclosures along with the said form. The applicants have signed the said form in their capacity as members of Governing Body of the Trusts namely N. S. Dixit Education Foundation at Sr. Nos. 1 and 3 on the said form. It is further to be noted here that, applicant Mr. Maulik N. Dixit has signed a cheque in his capacity as Chairman of the 'City International School' on 24.4.2006. There are various documents on record to clearly suggest that the applicant Mr. Maulik Dixit was the Chairman of City International School which was being conducted by the said N.S. Dixit Education Foundation Trust. The audited accounts of the said school are also signed by the applicant Mr. Maulik N. Dixit in his capacity as trustee of the said N.S. Dixit Education Foundation Trusts.

9. It is to be further noted here that, if there would have been genuine lease agreement dated 16.3.2006 for a period of 30 years in existence, in that case there was no need for the parties herein to execute leave and licence agreement from time to time and last such

leave and licence agreement was executed on 1.7.2011. As noted earlier, even in the last leave and licence agreement dated 1.7.2011 there is no reference of the said Lease Deed dated 16.3.2006.

It is to be noted here that the original Lease Deed dated 16.3.2006 is not recovered by the police till today and unless and until the applicants are thoroughly interrogated the recovery of the said documents is blink. The father of the applicants Shri. Nandan Dixit expired on 25.2.2013 and the applicants therefore cannot be permitted to take benefit of the same by raising a specious plea that, they have no knowledge as to what their father did in the year 2006. The evidence on record clearly suggests that, the applicants were having explicit knowledge about the existence of the said lease deed dated 16.3.2006 and they have used the said document while getting the provisional affiliation with the said CISCE Board, New Delhi. The record of investigation clearly indicates that there is sufficient material to show the complicity of the applicants in the present crime as apparent.

10. After taking into consideration the aforestarted facts, record of

investigation, serious allegations against the applicants and the gravity of the offence this Court is of the considered view that, the applicants do not deserve to be protected by pre-arrest bail.

10. Application is accordingly rejected.

11. At this stage Mr. Desai, the learned Senior counsel appearing for the applicants submitted that the applicants are intending to challenge the present order before the Hon'ble Apex Court and therefore, the operation and implementation of the present order may be stayed for a period of five weeks from today. At his request the operation and implementation of the present order is stayed for a period of five weeks from today.

(A.S. GADKARI, J.)