

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 175 OF 2019

Afzal s/o Budhan Shaikh,
Age: 48 years, Occ: Agriculture,
R/o. Village Devlai – Satara Parisar,
Aurangabad.

... APPLICANT

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Chikalthana Police Station,
Aurangabad.

2. Kundbihari Agarawal s/o Jugal Kishor Agarawal,
Age: 59 years, Occ: Business,
R/o. Plot No.304 and 305, infront of
Hotel Ramgiri, N-3 CIDCO,
Jalna Road, Aurangabad.

... RESPONDENTS

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Mr. S. S. Kazi, Advocate for Applicant.

Mr. M. M. Nerlikar, APP for Respondent No.1 / State.

Mr. V. D. Sapkal, Advocate i/b Mr. Shaikh Mujtaba Gulam Mustafa,
Advocate for Respondent No.2

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CORAM : T. V. NALAWADE &
S. M. GAVHANE, JJ.

DATE : 20th November, 2019.

JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The proceeding is filed for relief of quashing of FIR No.74 of 2018, registered with Chikalthana Police Station, District Aurangabad, for the offences punishable under Sections 420, 406, 504 and 506 of the Indian Penal Code and also for relief of quashing of charge-sheet filed in this crime bearing Charge-Sheet No.86 of 2019.

3 The crime was registered on the basis of report given by Respondent No.2, Kundbihari Agarawal. He gave report to police on 9th March, 2018. In the report, he has made allegations against the present Applicant that the Applicant has deceived him by making false representation that the Applicant will sell his two plots from Gat Nos.134 and 137 situated at village Zhalta. The total area of these plots is 40 Ares and in FIR it is contended that the Applicant had agreed to sell these two plots for total consideration of Rs.23,51,000/-. It is contended that from prior to the date of agreement, the Applicant, Accused was known to informant and so the informant trusted the Applicant. It is contended that the agreement took place on 15th

November, 2012 and as earnest money, the amount of Rs.51,000/- was given by the informant to the Applicant. It is contended that the amount of Rs.15,00,000/- was given on 25th November, 2012 and the amount of Rs.8,00,000/- was given on 19th October, 2013. It is the contention of the informant that every time when the amount was given, there were some witnesses, but receipts were not taken due to previous acquaintance of the parties and due to the trust, which informant was having in Applicant.

4 It is the contention of the informant that on 18th January, 2016, the Applicant agreed to execute the sale-deed in favour of the informant and wife of informant and such document of sale was prepared and stamp duty of Rs.1,44,000/- for the transaction was paid by filing *Chalan* of this amount by the informant. It is contended that after making payment of stamp duty and after preparing the document of sale, the present Applicant, the informant and the witnesses had gone to the office of informant and there, in the presence of witnesses, the present Applicant signed on the sale-deed. It is contended that on the next day, the sale-deed was to be presented for registration, but the Applicant, Accused did not turn up for presenting the sale-deed before the Sub-Registrar. It is contended that under one or other pretext, the Applicant avoided to get the sale-deed

registered and then he flatly refused to come to the office of Registrar for registering the sale-deed. Thus, there is allegation against the Applicant that by deceiving the informant, the Applicant had extracted amount of Rs.23,51,000/-.

5 The learned counsel for Applicant took this Court through the report given to City Chowk Police Station, Aurangabad by the informant on 9th May, 2017. In this report, the informant had contended that there was agreement of sale of two portions of Gat Nos.134 and 137 and price settled was Rs.3,51,000/- per acre. Thus, as per this report, the total consideration for two plots was Rs.3,51,000/- (not Rs.23,51,000/-). In report dated 9th May, 2017, the informant had contended that he had given earnest money of Rs.5,000/- (not Rs.51,000/- as now alleged). In that report, the informant had contended that on 25th November, 2012, he had given, through his wife, the amount of Rs.1,51,000/- to the Applicant. In the present FIR, he has contended that in the presence of other witness amount of Rs.15,00,000/- was given. It was contended in the previous report that on 19th October, 2013, the amount of Rs.2,00,000/- was given and at that time Vijay Agarawal was present as witness. In the present FIR, it is contended that on 19th October, 2013, amount of Rs.8,00,000/- was given. In the FIR dated 9th May,

2017, it was contacted that on 12th January, 2016, the Applicant had agreed to execute the sale-deed and then on 18th January, 2016, the documents were prepared and the amount of Rs.1,44,000/- was paid towards stamp duty under *Chalan*. Other allegations made in the report dated 9th May, 2017 are similar to the allegations made in the present FIR. Copy of this report is collected by the Applicant under the Right to Information Act. There is more record collected under the Right to Information Act and it shows that the police did not take any action and file so-called report given on 9th May, 2017. There is such communication made with the P.I. of City Chowk Police Station, Aurangabad dated 14th July, 2017. Reason is given that the informant refused to produce the relevant documents before the police for investigation purpose. There is photocopy of statement of witness, Vijay Agarawal dated 31st January, 2018 and it shows that before the police he had contended that he was not present at the time of any such transaction and in his presence amount of Rs.8,00,000/- was not given by the informant to the Applicant.

6 The submissions made show that even when the informant is having sale-deed document shown to be executed on 18th January, 2016, he did not file civil suit for getting the sale-deed registered. The photocopy of the disputed document shows that there

is overwriting on the date of execution of this document. The learned counsel for informant submitted that there is video recording of the incident of signing the document by the Applicant and of putting thumb impression on the document by the Applicant in the office of informant. Photocopies of recording are produced and there is DVD of CCTV footage with the informant. The learned counsel submitted that when there is such record, it cannot be said that there is no material at all with the informant to prove that he is deceived.

7 When a query was made to the learned counsel representing the informant and he was asked as to why totally different version was given to other police station like City Chowk Police Station in the past and consideration shown to be received was also much less like Rs.3,51,000/- and now the first informant is contending that the agreed consideration is Rs.23,51,000/-, the learned counsel submitted that the previous FIR needs to be ignored as no action was taken by police and the subsequent FIR needs to be considered. He submitted that as on the document there is signature of the Applicant, it needs to be presumed that total consideration of Rs.23,51,000/- was received by him. This Court holds that such submission cannot be accepted. The figures mentioned in the two FIRs speak much and show as to how manipulation was done.

Firstly, on every page of the so-called sale-deed, there is no signature of Applicant and there is only one page on which there is purported signature and thumb impression of the Applicant and that is only the last page. The figures of amount mentioned in the two FIRs show that initially, it was contended that the total consideration was Rs.3,51,000/- and now it is contended that the total consideration is Rs.23,51,000/-. If on the so-called date of sale-deed i.e. on 18th January, 2016, the amount of Rs.23,51,000/- was really given, in ordinary course, this figure would have been mentioned in the report given to City Chowk Police Station, Aurangabad but that was not done. The disputed document of sale-deed shows that as per the Government valuation, the value of the property is around Rs.24,00,000/- and as per the Government valuation, the price per Guntha of this land is Rs.60,000/-. This circumstance shows as to how the manipulation was done. One thing which needs to be kept in mind is that there is virtually no record except the disputed document with the informant to show that there was agreement of sale and on any occasion such huge amounts were given to the present Applicant. It is clear that it is not possible for the informant to prove his contentions in the Civil Court and that is why he is trying to pressurize the Applicant by filing such report. The circumstance that one police station did not take action and then the informant approached other

police station also needs to be kept in mind. In the present FIR, it is not mentioned by the informant that he had approached City Chowk Police Station, Aurangabad on 9th May, 2017. Thus, there is clear probability that it is the informant, who has manipulated the things and criminal case is nothing but the pressure tactics of the informant. Admittedly, the Applicant had business relations with the informant and the informant is a estate broker. This circumstance cannot be ignored. In such circumstances, it is always desirable that the dispute is decided by the Civil Court. From the aforesaid circumstances, it is not possible to believe that there was intention to deceive right from the beginning and it cannot be presumed that the informant is really deceived by the present Applicant.

8 The learned counsel for Applicant placed reliance on the observations made by the Supreme Court in following reported cases:

- a) *(2018) 15 Supreme Court Cases 273*, (*M. Suresh and others Vs. State of Andhra Pradesh and another*);
- b) *2017 AIR (SC) 3656*, (*Medmeme, LLC and others Vs. Ihorse BPO Solutions Private Limited*);
- c) *2010 AIR (SC) 659*, (*Poonam Chand Jain & Anr. Vs. Fazru*);and

- d) (2009) 3 Supreme Court Cases 78, (V. Y. Jose and another Vs. State of Gujarat and another);

9 The propositions made by the Supreme Court in the aforesaid reported cases cannot be disputed. It is true that the remedy under criminal law is not barred on the ground that civil remedy is available, but it is also true that the criminal law cannot be invoked for setting the civil dispute when no offence is committed. If there is abuse of process of law, this Court has power to intervene and quash the proceeding. In the present matter, this Court holds that it will be abuse of process of law if the Applicant is asked to face the trial for aforesaid offences. In the result, the following order is passed:

ORDER

- I. The application is allowed.
- II. Relief is granted in terms of prayer clauses 'B' and "B-(1)".
- III. Rule is made absolute in those terms.

[S. M. GAVHANE, J.]

[T. V. NALAWADE, J.]