

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 233 OF 2019

1. Madhav s/o. Hariharrao Kagne
Age 36 years. Occ. Agri,
R/o Vakil Colony, Kandhar,
Tq. Kandhar Dist. Nanded.

2. Sanjay s/o Eknath Nagargoje
Age 46 yrs. Occ. Agri,
R/o Old Kautha,
Tq. & Dist. Nanded.

... Applicants

Vs.

1. The State of Maharashtra
Through Police Station
Nanded Rural, Tq. & Dist. Nanded

2. Sumitra w/o Suresh Girde,
Age 35 yrs. Occ. Household,
R/o ND 41, Near LIC Office CIDCO,
Tq. & Dist. Nanded.

... Respondents

...
Advocate for the Applicants : Shri. B.N. Gadegaonkar
APP for Respondent No. 1 : Shri. K. S. Patil
Advocate for the Respondent No. 2 : Shri. A. M. Gaikwad

...

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ
DATE : 13TH JUNE, 2019.**

ORAL JUDGMENT [PER K.K. SONAWANE, J]:-

1] The applicant moved present application taking recourse of remedy under Section 482 of Cr.P.C. to get quash and set aside, the penal proceeding bearing Crime No. 580 of 2018,

registered against them, with Nanded Rural Police Station, for the offence punishable under Section 304, 420 r/w. 34 of IPC.

2] It has been alleged that the complainant - First Informant - Sumitra wd/o. Suresh Girde, on 16.11.2018, visited to the police of Nanded Rural P.S. and filed report that her husband, deceased Suresh Girde, 48 years old, was eking livelihood by plying the auto-rickshaw. There was an agricultural land admeasuring 5 acreas bearing Gat No. 112, at village Karegaon, Tahsil Loha belonging to the spouses. According to first informant - Smt. Sumitra, her husband came in contact with the petitioners when he was running a kiosk in front of Shrinagar BK Hall since the year 2011. In the year 2012, her husband borrowed Rs. 1.5 Lakhs as hand loan with interest from the applicants, and in lieu of guarantee, the first informant and her husband executed the registered sale deed of 0.40 R agricultural land bearing Gat No. 112 as mentioned above. It has been alleged that the husband of the first informant had refunded the amount with interest to the applicants and requested to re-convey the agricultural land. But, the applicants did not pay any heed. They were reluctant to re-convey the agricultural land in favour of husband of first informant. Despite the refund of entire hand loan amount with interest to the applicants, they did not budge to re-convey the agricultural land in favour of husband of complainant. Therefore, he always remained

under mental stress. According to complainant, the by-pass surgery was performed on her husband and despite the same, the applicants insisted her husband to refund more amount. Due to continuous mental stress, the husband of complainant suffered a heart attack on 15.11.2014 and breathed his last. It has been alleged that the applicants were aware about the delicate plight of the husband following by-pass surgery and even thereafter, they mentally harassed her husband for repayment of hand loan resulting into his death due to heart-attack. Therefore, the first informant filed the report against applicant.

3] Pursuant to FIR of wife of the deceased Suresh, police of Nanded Rural P.S. Registered the Crime No. 580 of 2016 under Section 304, 420, r/w. 34 of IPC and set the penal law in motion. Pending investigation, the applicants preferred the present application to get themselves absolved from the charge pitted against them.

4] The learned counsel for the applicant vehemently submits that the entire allegations nurtured on behalf of first informant against the applicants are false, baseless and fabricated one. The applicants did not commit any crime. They are falsely implicated in this case with ulterior motive to get returned the agricultural land alienated in favour of applicants for consideration.

The learned counsel for the applicants, during course of arguments, drawn attention of this court towards the document of NC No. 454 of 2018 filed on behalf of first informant on 12.11.2018 i.e. prior to 3/4 days of the present FIR. In the complaint to the police, it has been alleged that the husband of the complainant has executed registered sale deed in favour of applicant, but the entire consideration amount was not paid to him by the applicant. According to complaint, the applicants avoided to make payment of balance consideration amount to the husband of first informant. The first informant and her husband did not deliver possession of the contentious agricultural land to the applicant and it erupted dispute between them. According to learned counsel, there were no reference about the loan transactions in the complaint of NC No. 454 of 2018 filed on behalf of the complainant. He submits that, as the police did not act upon the complaint filed by the first informant on 12.11.2018 being N.C. Care, the complaint, once-again preferred the present FIR, with ulterior motive to embroil the applicants in this false case.

5] The learned counsel further submits that husband of the complainant has sold one plot and agricultural land admeasuring one Acre in favour of applicants, for consideration. The first informant-complainant was not happy with the transaction to alienate land in favour of applicant. According to learned counsel,

the husband of complainant died owing to natural death following heart-attack. Taking undue advantage of attending circumstances of untimely death of husband, the complainant preferred present false complaint with ulterior motive to pressurize the applicants to get returned the immovable property purchased by the applicants.

6] The learned APP and the learned counsel for the respondent No.2 raised objection to the contentions propounded on behalf of applicants and submits that, there are prima facie circumstances, reflects from the FIR for commission of crime by the applicants. The husband of the first informant was suffering from heart ailment. The by-pass surgery was performed on him. The applicants were aware about the delicate physical condition of the husband of complainant. Despite the same, they insisted her husband for payment of more amount. The husband of the complainant always remained under mental stress, resulting into suffering a heart attack, causing his death.

7] We have given anxious consideration to the arguments advanced on behalf of both sides. We have also delved into the relevant documents produced on record, comprising document of NC No. 454 of 2018, as well as extract of register sale deeds executed in between the complainant, her husband and the applicants for sale of agricultural land as well as open plot for

consideration. It is to be noted that prior to present FIR bearing Crime No. 580 of 2018, the first informant filed complaint to the police of Nanded Rural P.S. Dated 12.11.2018, and ventilated the grievances that in the year 2012, the applicants got executed registered sale deed of land Gat No. 112 admeasuring 0.40 R from herself and her husband Suresh Dhirde and obtained Rs. 1.5 Lakhs from them. It has been alleged that the applicants avoided to make payment of balance consideration amount to the complainant. The applicants also gave threats of life to the complainant and her husband, for delivery of possession of agricultural land. Therefore, she filed application for penal action against the applicants. In view of nature of allegations, the concerned police registered the NC No. 454 of 2018 under Section 506 of IPC. Thereafter within three or four days, on 16.11.2018, the complainant preferred the present F.I.R. for registration of crime against applicant.

8] It is strange to appreciate that in the aforesaid NC No. 454 of 2018, there was no whisper about the loan transaction occurred in between the applicant and her husband for an amount of Rs. 1.5 Lakhs as well as execution of sale deed in lieu of guarantee of the loan amount. There was also no reference in the earlier document of NC No. 454 of 2018 that it was agreed to re-convey the agricultural land, after refund of entire hand loan amount with interest. In contrast, it reflects from the earlier

complaint that the balance consideration is yet to be paid to the complainant on the part of the applicants and there was dispute about the delivery of possession of the contentious agricultural land sold out in favour of applicants. There was a threat of life to her husband and, therefore, she filed the report prior to death of her husband. These circumstances, prima facie, created clouds of doubt about the veracity of allegations nurtured against the applicants in the present F.I.R. on behalf of complainant.

9] Admittedly, the entire transaction occurred in the year 2012 and in case, there was a balance consideration amount remained unpaid by the applicant, the complainant or her husband would have initiated civil proceeding against them. But there was no court proceeding filed by the complainant or her husband and after colossal period, the complainant cast allegations against them. There is also divergent version of complainant in the present F.I.R. and the N.C. No. 454 of 2018 filed before the Police prior to 3/4 days of death of her husband. In such peculiar circumstances, it is hard to believe that the death of husband of complainant caused due to mental torture on the part of applicants. It is unsafe to conceive that the applicants committed any mischief of cheating etc. as envisaged under Section 420 of IPC.

10] Moreover, in regard to the allegations under Section 304 of IPC, it is an offence of culpable homicide not amounting to

murder. It is imperative to take into consideration the five exceptions specified in section 300 of IPC, to arrive at the conclusion about the prima facie case against the applicants under section 304 of IPC. As referred above, it has been alleged that the by-pass surgery was performed on the husband of complainant and despite the same, without taking care of delicate plight of the husband of complainant, the applicants insisted for refund of loan amount causing mental torture resulting into his death. It would be reiterated that in view of allegations made in the aforesaid NC No. 452 of 2018, it is rather doubtful that there was any loan transaction occurred in between the husband of complainant and the applicants. Moreover, after taking into consideration the five exceptions of Section 300 of IPC, it appears that the allegations made in the FIR even after they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the applicants under Section 304 of IPC. It is fallacious to conclude that recitals of the FIR prima facie discloses commission of an offence of culpable homicide not amounting to murder against the applicants. The intense scrutiny of allegations made in the FIR reflects that the allegations are absurd and inherently improbable on the basis of which no prudent person can reach a just conclusion that there is sufficient ground for proceeding against the applicants. At the cost of repetition, we would reiterate that the attending circumstances on record, prima

facie, demonstrate that the alleged FIR is being filed on behalf of complainant, with ulterior motive, for her personal gain, under the guise of death of her husband.

10] At this juncture, it would apposite to make a reference of legal guidelines delineated by Honourable Apex Court in the case of "State of Haryana Vs. Bhajanlal and others " reported in AIR 1992 SC 604. Their Lordships in para.108, observed as under :-

"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose*

a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due

to private and personal grudge.

11] In the light of aforesaid legal guidelines, we are of the opinion that in the instant matter, it is imperative to exercise powers under Section 482 of Cr.P.C. to quash and set aside the impugned FIR or complaint filed on behalf of the complainant against the applicants, in the interest of justice. The present penal proceeding filed against the applicants appears to be “an abuse of process of law” and to secure ends of justice, it is essential to quash and set aside the criminal proceeding filed on behalf of complaint in this case.

12] with the aforesaid discussion, the Criminal Application stand allowed in terms of prayer clause (C) to the extent of present applicants. The impugned FIR bearing Crime No. 580 of 2018 filed on behalf of the first informant – Smt. Sumitra wd/o. Suresh Girde against the applicants is hereby quashed and set aside. Rule is made absolute in those terms. No orders as to costs.

[K.K. SONAWANE]
JUDGE.

[T. V. NALAWADE]
JUDGE

Grt/-