

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

**CRIMINAL WRIT PETITION NO.1620 OF 2018**

1. Ravishankar S/o Gurusiddhappa Choudhari,  
Age 60 years, Occu. Agri.,  
R/o "Shrikrushna Kunj", Vidyanagar,  
Parli-Vajjnath, Tq. Parli-Vajjnath,  
Dist. Beed.
2. Kedar S/o Ravishankar Choudhari,  
Age 35 years, Occu. Service as Professor,  
R/o As above.
3. Prashant S/o Ravishankar Choudhari,  
Age 29 years, Occu. Service as Engineer,  
R/o As above.
4. Pravin S/o Ravishankar Choudhari,  
Age 28 years, Occu. Service at Kerala,  
R/o As above. ... **Petitioners**

Versus

1. Rajabhau S/o Shriram Phad,  
Age 37 years, Occu. Business & Contractor,  
R/o Shankar Parvati Nagar, (Jirge Nagar),  
Ambajogai Road, Parli-Vajjnath.
2. The State of Maharashtra,  
Through Police Inspector,  
Parli-Vajjnath City Police Station,  
Tq. Parli-Vajjnath, Dist. Beed. ... **Respondents**

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Mr. S.V.Warad, Advocate for Petitioners.

Mr. P.G.Borade, APP for Respondent-State.

Mr. M.V.Nagargoje, Advocate for Respondent No.1.

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**CORAM : T.V.NALAWADE AND  
MANGESH S. PATIL, JJ.**

**RESERVED ON : 24.04.2019  
PRONOUNCED ON : 04.06.2019**

**JUDGMENT : (Per Mangesh S. Patil, J.) :-**

Heard. Rule. The Rule is made returnable forthwith. The learned APP waives service for the Respondent-State. The learned advocate Mr. M.V.Nagargoje waives service for Respondent No.1. With the consent of both the sides the matter is heard finally at the stage of admission.

2. In this proceeding under Section 482 of the Cr.P.C. as also under Article 226 of the Constitution of India, the petitioners are seeking quashment of FIR in Crime No.143 of 2018 registered with Parli Vajinath City Police Station for the offences punishable under Sections 406, 420 read with Section 34 of the IPC.

3. Respondent No.1 lodged the FIR on 21.08.2018 inter alia alleging that he was acquainted with the petitioners. They were in need of money. They agreed to sell their plot bearing City Survey No.4218 of Parli Vajinath for a

consideration of Rs.26,00,000/- to him. He paid Rs.50,000/- to petitioner Ravishankar as an earnest. After some days when he insisted the petitioners to execute a sale deed, they asked him first to deposit the money in their account and assured to execute the conveyance. Accordingly, he transferred an amount of Rs.10,00,000/- each in the account of petitioner Pravin and Kedar on 08.12.2014 and 22.12.2014 respectively. He again transferred an amount of Rs.5,50,000/- in the account of petitioner Kedar on 23.04.2015. He thereafter deposited Rs.60,000/- with the Municipal Council for transfer of the property in the municipal record. It was agreed that the sale deed would be executed on 24.04.2015. He therefore filled e-Challan for buying stamp papers worth Rs.3,39,600/-. However thereafter petitioners insisted him to pay them additional money and when he refused, they denied to execute the sale deed. Thus he alleged that the petitioners in furtherance of their common intention have misappropriated the money and have cheated him.

4. The learned advocate for the petitioners vehemently submitted that accepting the allegations in the FIR at their face value all the necessary ingredients for constituting criminal breach of trust or cheating cannot be made out. They have been admitting receipt of money and their liability to pay off respondent No.1, therefore there is no question of any breach of trust or cheating. Only an imaginary and concocted story has been developed as regards the alleged oral agreement of sale. On the face of it the allegations are not probable and it would be a sheer abuse of the process of law if a simple money transaction is allowed to be made basis for criminal prosecution instead of seeking its enforcement under the civil law.

5. In support of his submission he placed reliance on the decisions of the Supreme Court in the case of **P. Shravan Kumar & another Vs. State of Karnataka ; 2016 ALL MR (Cri.) 4492 (S.C.), Vinod Natesan Vs. State of Kerala & others ; 2019 ALL SCR (Cri.) 63, Hridaya Ranjan Parasad Verma & others Vs. State of**

***Bihar & another ; (2000) 4 Supreme Court Cases 168***

and the Division Bench decision of this Court in **Mr.**

***Jitendra Nathmal Joshi @ Sharma Vs. State of***

***Maharashtra and another ; 2011 ALL MR (Cri.) 2597.***

6. The learned advocate for the petitioners, so far as facts are concerned, further pointed out that the FIR has been lodged to wreck vengeance. He would point out that already respondent No.1 has filed couple of civil suits based on the alleged oral agreement of sale of the plot which are pending adjudication and would culminate into determination of the rival claims in due course.

7. Further he would point out that already a Regular Criminal Case was filed by respondent No.1 in respect of the self same allegations for the self same offences. While it was still pending he lodged the present complaint on the basis of which the impugned FIR has been registered on 21.08.2018. However, he subsequently filed a pursis in the criminal proceeding pending before the Judicial Magistrate First Class on 31.08.2018 and unconditionally withdrawn that complaint. He would further point out

that while disposing of the criminal case the Magistrate had passed a speaking order which shows that the learned Magistrate had made an inquiry with respondent No.1 personally who expressed his willingness to withdraw the complaint unconditionally. This conduct on his part clearly demonstrates that the FIR has been lodged with an ulterior motive to harass the petitioners and therefore applying the principles in the case of ***State of Haryana and Ors. Vs. Bhajan Lal and Ors. ; AIR 1992 Supreme Court 604***, the FIR and the crime may be quashed and set aside.

8. The learned APP and the learned advocate for respondent No.1 strongly opposed the petition. They submitted that merely because respondent No.1 has invoked civil remedy that would not *ipso facto* prevent him from resorting to the criminal law. Therefore, the doors of justice cannot be shut to him at the threshold and it would be better left for the Investigating Officer and the Criminal Court to ponder upon the issue. There are specific and clear allegations in the FIR which clearly

make out the offence of criminal breach of trust as well as cheating and the probable defence cannot be considered by this Court in this proceeding.

9. We have carefully considered the petition and the papers. At the outset it is necessary to note that inspite of availing of few adjournments for filing affidavit-in-reply, respondent No.1 has not availed of the liberty to contest the petition by filing a counter affidavit / reply. In our considered view, it is certainly an important aspect which carries some weight, even though it cannot be resorted to as a decisive factor.

10. Be that as it may, the allegations in the complaint registered as the FIR clearly show that even according to respondent No.1, the petitioner Nos.2 and 4 had orally agreed to sell a plot of land to him for some consideration which he subsequently parted, but they refused to execute the sale deed. Even it has been alleged that from time to time he insisted them to execute the sale deed but they avoided to do so. He therefore asked them to return the money but they kept promising him to repay the

money. It is thus quite clear that there are no specific and precise allegations either about he having entrusted money to them so as to charge them for criminal breach of trust. Similarly there are no allegations about they having induced him to part with money with a dishonest intention to deceive him by making a false promise, agreeing to sell the plot to him. Therefore, factually, the FIR does not contain all the necessary ingredients which would constitute the offences punishable under Sections 406 and 420 of the IPC. Therefore for this reason alone, in our considered view, the case of the petitioners is squarely covered by category 1 and 3 from the case of *Bhajan Lal* (supra).

11. Further, as is demonstrated by the petitioner's advocate, respondent No.1 had filed Regular Criminal Case No.62 of 2016 in the Court of Judicial Magistrate at Parli Vaijnath for the same offence. While it was still pending the present FIR has been lodged on 21.08.2018. It is thereafter that the pursis (Exh.I) was filed in that criminal case seeking its withdrawal. The Magistrate by the order of the even date (Exh.J) disposed of the

complaint by specifically observing that cognizance of the crime was already taken on 03.09.2016 and an inquiry was directed under Section 202 of the Cr.P.C. report was received from the police and when the matter was kept for further hearing the pursis was filed. The learned Magistrate also personally inquired with respondent No.1, who was the complainant therein, and the latter had specifically disclosed that he was withdrawing the complaint unconditionally. It is thus quite apparent that inspite of the Magistrate having taken cognizance of the offence and was seized of the matter, instead of pursuing the remedy which he had already availed of, for the reasons best known to him he lodged the present FIR and subsequently withdrew the private complaint unconditionally.

12. We do not intend to discard a situation wherein there could be a private complaint as well as a police case in respect of the same crime. We are pointing out this circumstance to demonstrate that the FIR has been registered with some ulterior motive instead of pursuing the remedy of a private complaint about which the

Magistrate had already taken cognizance of. This circumstance in our considered view, clearly shows that the FIR is a sheer abuse of the process of law and respondent No.1 cannot be allowed to take advantage of the situation and it has been clearly registered to wreck vengeance which is category 7 from Bhajan Lal's case.

13. As has been pointed out by the learned advocate for the petitioners by referring to catena of decisions of the Supreme Court and this Court (supra), purely a civil remedy available to respondent No.1 is sought to be given a criminal trappings. Even if it is assumed that petitioner Nos.2 and 4 have agreed to sell the plot to respondent No.1, the latter is only entitled to enforce the civil right and incidentally he has already instituted couple of civil suits, one for injunction bearing R.C.S. No.258 of 2016 on 27.10.2016 and another for specific performance in the form of Special Civil Suit No.24 of 2017 on 31.08.2017. It is thus quite apparent that he has been well advised to institute these proceedings in the Civil Court to enforce his civil right under the alleged agreement of sale. However, this attempt to bring the case under the

criminal law is nothing but prima facie a tactic resorted to by him apparently to pressurize the petitioners to dance to his tunes. Considering all these aspects, in our view, it would be sheer abuse of the process of law if the matter is allowed to be investigated by the police in the present form.

14. The Writ Petition is allowed. The FIR and the Crime No.143 of 2018 registered with Parli Vaijnath City Police Station for the offences punishable under Sections 406, 420 read with Section 34 of the IPC is quashed and set aside. The rule is made absolute in these terms.

**(MANGESH S. PATIL, J.)**

**(T.V.NALAWADE, J.)**

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vmk/-