IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2049 OF 2018

Linisha Augustine Zevier .... Applicant

versus

The State of Maharashtra .... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.109 OF 2018

Prakash Shivaji Chavan .... Applicant

versus

The State of Maharashtra .... Respondent

…....

- Mr. Nagesh Y. Chavan, Advocate for Applicant in ABA No.2049/18.
- Mr. Kishor Patil I/b. Sachin K. Hande, Advocate for Applicant in ABA No.109/18.
- Mr. Umesh Mankapure, Advocate for Orig. complainant in ABA No.109/18.
- Smt. A. A. Takalkar, APP for the State/Respondent.
- PN 1470, N. N. Kolekar, Vishrambaug Police Station, Sangli, present.

CORAM : SARANG V. KOTWAL, J.
DATE : 31st JULY, 2019

P.C. :

1. Both these applications are decided by this common order because they arise out of same C.R. No.369/2017 registered at Vishrambaug Police Station, Sangli under sections 420, 465, 466, 467, 471 r/w. 34 of IPC.

2. The FIR in this case is lodged by one Shamrao Kadam on 23/12/2017. He was owning two plots at Wanleswadi on CTS No.35/A/A/1/1B/1/3 and CTS No.35/A/A/1/1B/1/4 admeasuring 284.90 sq. meter and 282.04 sq. meter respectively. He had purchased those plots in the year 1981. He was residing at his native place Malgaon and he used to visit Sangli frequently. He had constructed four small rooms on those plots in Wanleswadi. He has mentioned in his FIR that in the year 2008, he got acquainted with the applicant Linisha in ABA No.2049/18. She represented to him that she would look after his property as he was not regularly staying there. The first informant allowed her to reside there at the rent of Rs.700 per month. Initially, she paid the rent but subsequently, she stopped paying rent. It is his

case that in the year 2013, when he had gone to those rooms, he had seen lock of his cupboard was broken but he did not pay much attention. In the year 2015, he gave those two plots for development to M/s. G. P. Developers. He was to get a flat on the second floor and a shop on the ground floor, in the developed building. He had received his some part of consideration of this transaction. The documents were registered in the Sub-registrar's office at Sangli and the Developer had started construction on that plot. In July 2017, one of the partners of M/s. G. P. Developer called the first informant and inquired with him whether any court proceedings were pending in respect of that property. He informed that some civil suit was decided in the Court at Sangli. The informant made inquiry and he came to know that one Special Civil Suit No.188/2013 was filed in the Civil Court at Sangli by the applicant Prakash Chavan in ABA No.109/2018 alongwith one Meena Tandale, based on a notarized agreement for sale. The first informant was unaware of the proceedings. The proceedings culminated into passing of the decree in favour of the applicant Prakash Chavan. Execution proceedings were also filed. The applicant was not aware of these proceedings and in those execution proceedings the applicant Prakash Chavan got the agreement for sale executed through Court. The FIR mentions that there was a possession receipt dated 13/8/2013 mentioning that the first informant had given possession on that date to the applicant Prakash Chavan. It is the case of the first informant that the agreement for sale as well as this possession receipt was forged. Based on these forged documents decree was obtained and was executed by the accused Prakash Chavan. On the basis of these allegations, the FIR was lodged by him.

3. Heard Mr. Nagesh Chavan, Ld. Counsel for the Applicant in ABA No.2049/18, Mr. Kishor Patil, Ld. Counsel for the Applicant in ABA No.109/18, Mr. Umesh Mankapure, Ld. Counsel for the original complainant in ABA No.109/18 and Smt. Takalkar, Ld. APP for the State.

4. Mr. Kishor Patil Ld. Counsel for the applicant in ABA No.109/2018 submitted that the informant and his wife Linisha

had agreed to sale those plots to applicant Prakash Chavan on 14/8/2013. He submitted that the agreement was a notarized agreement and it bears signature of the first informant. He submitted that the first informant was married to the applicant Linisha and therefore, applicant Prakash Chavan did not suspect that there was any wrong in the transaction. Shri. Patil submitted that the applicant has taken all the necessary legal steps in the civil proceedings and has taken recourse to the proceedings permissible in law. He submitted that a competent Civil Court has passed a decree in favour of the applicant Prakash Chavan. The decree was also executed in execution proceedings. He, therefore, submitted that the decision of the Civil Court binds all the parties concerned. The first informant never participated in the proceedings though the record shows that he was served with the notice of the civil proceedings. The applicant had acted bonafide and he has not committed any offence.

5. Ld. Counsel Shri. Nagesh Chavan for the applicant in ABA No.2049/2018 submitted that she was from Kerala and

therefore, she was unfamiliar with Marathi language and therefore, she was not aware of the contents of the documents. He submitted that if there is any offence, it was committed by the parties taking advantage of her lack of knowledge of the language.

6. As against these submissions, Shri. Mankapure, Ld. Counsel for the original complainant and Ld. APP submitted that there was a conspiracy. The bailiff's report was obtained on the basis of receipt of summons by the applicant Linisha though it was issued in the name of the informant. The investigation papers include statements of three different bailiffs. They show that on each occasion applicant Linisha accepted the summons on behalf of first informant and always represented that first informant would come after a few days. It is quite apparent that the first informant was totally kept out of the civil suit.

7. I have considered all these submissions. Though there is a decree of civil court and execution of that decree has taken place, the manner in which it is obtained is also required to be

taken into consideration to decide as to whether any offence is committed or not. The bailiffs report itself indicates summons was received by the applicant behind back of the informant and there is nothing to show that the informant was aware of the civil proceedings. The contention that the applicant Linisha was married to the first informant is disputed by the first informant. The submission of Mr. Patil that name of the applicant Linisha was changed and was published in official gazette does not have much bearing on the facts of the case. It is further submitted by the Ld. APP that there is a handwriting expert's report which is included in the papers of investigation, which shows that the signature of the first informant on the agreement for sale of those property to the applicant Prakash Chavan is forged. At this stage, it is sufficient circumstance to attract all the provisions of IPC under which the FIR is lodged. All these factors would not affect the FIR. Even orders of the civil court will not affect this offence because the first informant was never served with the civil proceedings pending before the civil court.

8. The submission that the applicant Linisha was not aware of Marathi language and therefore, she was roped into the transaction is not a circumstance in her favour. There are allegations in the FIR that important documents kept in the cupboard were used to establish the identity of the informant in the transaction therefore, even the applicant Linisha's involvement is apparent from the record. In view of the discussion, custodial interrogation of the applicant is necessary to unearth the evidence in that behalf. Therefore, there is no merit in the application. Hence, application is rejected.

9. Ld. Counsel for the applicants submitted that since the applicants were on interim protection for a long time, it should be continued. However, looking at the nature of allegation and urgent need of interrogation, the request is rejected.

(SARANG V. KOTWAL, J.)