

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.726 of 2019  
(modified as per order dated 8<sup>th</sup> August 2019)**

Ganesh Eknath Phad .. Applicant  
Versus  
The State of Maharashtra .. Respondents

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Mr. B.G. Tangsali for the applicant.  
Ms.Sangita Shinde, APP for the State.

**CORAM: SHRI RANJIT MORE &  
SMT. BHARATI H.DANGRE, JJ.**

**DATED : 31<sup>st</sup> JULY 2019**

**P.C:-**

1            Heard Mr.Tangsali, learned counsel for the applicant, Ms.Shinde, learned APP for the State.

2            Application is filed for quashing and setting aside FIR bearing C.R.No.104 of 2013 registered with Kalachowki Police Station for offences punishable under Sections 465, 471 read with Section 34 of the Indian Penal Code.

3            The subject FIR was registered at the instance of Dayanand Parker. The FIR was registered against Eknath Balaji

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Phad and Pradeep Phad, father and brother of the applicant respectively. Applicant was also shown as connived with his father and brother and therefore, made an accused under Section 465, 471 read with 34 of the IPC. The subject FIR was investigated by the Kalachowki Police Station and charge-sheet was filed against the applicant's father Eknath Phad and applicant's brother Pradeep Phad. So far as present applicant is concerned, at the time of registration of FIR, he was taking education at Sweden for pursuing education. Today also, applicant is staying in Sweden and has acquired Swedish Permanent Residency and has Swedish National Identity Card.

4 In the absence of the applicant, charge-sheet was filed against applicant's father and brother for the above-stated offence and it was numbered as C.C.No.1500835/PW/2013. The applicant's father and brother were tried by the learned Metropolitan Magistrate's 15<sup>th</sup> Court, at Mazgaon for the offences under Section 465, 471 read with Section 34 of the IPC and by the judgment and order dated 16<sup>th</sup> April 2015, they came to be acquitted.

5 The applicant has been shown absconding in the said criminal case and when he came to know about the same, he approached this Court for quashing the subject FIR. We have perused the FIR and the charge-sheet against the

applicant's father and brother. The main allegation was against the applicant's father. The prosecution case proceeds that First Informant Dayanand Parker purchased a room from one Rakesh Singh in the year 1996. In the year 2011, under SRA Scheme, redevelopment of Ambevadi area commenced, wherein the said room was included. The prosecution case further proceeds that the applicant's father accused no.1 Eknath Phad was having room no.4A and was a neighbor of First Informant. Accused Eknath got prepared documents like Ration card, Election card, Aadhar card, Bank passbook and Pan Card on the address of the room of the First Informant and misused the room no.4 of the Informant. This was done by the main accused Eknath who is applicant's father with an intention to grab his room with connivance with applicant's brother Pradeep Phad and the applicant.

6           The prosecution, in order to prove the case against applicant's father and applicant's brother, examined four witnesses, including First Informant and the Investigating Officer as well as Assistant Rationing Officer. After appreciation of the evidence on record, the learned Magistrate concluded that prosecution may prove that the applications were given by the applicant's father and applicant's brother to various departments giving First Informant's address as his address. Therefore, giving the benefit of doubt, applicant's father and brother came to be acquitted for offences punishable

under Section 465, 471 r/w Section 34 of the IPC. This judgment of the learned Magistrate acquitting applicant's father and brother is not challenged by the prosecution and has attained finality. So far as the applicant is concerned, his role is that he connived with his father and brother in misusing the First Informant's address as Room No.4. Since charge is not proved against applicant's father and brother, and they are acquitted, no purpose would be served by keeping the subject FIR qua the present applicant.

In the above facts and circumstances, we quash and set aside the subject FIR.

Criminal Application is allowed in terms of prayer clause (b).

**(SMT. BHARATI H. DANGRE, J.)**

**(RANJIT MORE, J.)**