

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

CRIMINAL APPLICATION NO. 1055 OF 2020

- 1) Dhondiram s/o Bhujangrao Lohare,
Age 87 years, Occ: Retired,
R/o. Fule Nagar, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
- 2) Sanjay M. Mahajan,
Age 57 yrs. Occ- Certified Auditor,
R/o. Azad Chowk, Latur.
- 3) Gurunath s/o Baburao Pune,
Age 78 yrs, Occ – Retired,
R/o. Sonkhed Post Kingaon
Tq. Ahmedpur, Dist. Latur.

... **APPLICANTS**

VERSUS

- 1) The State of Maharashtra,
Through Police Station,
Ahmedpur, Dist. Latur.
- 2) Ganesh s/o Kashinath Gulve,
Age 75 years, Occ: Agri,
R/o. Market Colony, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

... **RESPONDENTS**

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Mr. S. P. Urgunde, Advocate for Applicants.

Mr. P. N. Kutti, APP for Respondent No.1 / State.

Mr. Krishna P. Rodge, Advocate for Respondent No.2.

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CORAM : **T. V. NALAWADE &
M. G. SEWLIKAR, JJ.**

DATE : 23rd September, 2020.

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

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

2 The present proceeding is filed for relief of quashing of FIR No.77 of 2020, registered with Ahmedpur Police Station, District Latur, for the offences punishable under Sections 420, 408, 471, 467, 468, 34 etc. of the Indian Penal Code.

3 Respondent No.2 Ganesh Gulve had filed private complaint bearing Application No.21 of 2020 against Dhondiraj Lohare, Gurunath Pune, and Sanjay Mahajan and in the application, he had requested for making order of direction to investigate the matter under Section 156(3) of the Code of Criminal Procedure. By order dated 13th February, 2020, the learned Judicial Magistrate First Class made order of such investigation. The police have already recorded some statements and papers of investigation were made available.

4 The learned counsel for Applicants submitted that the

informant has misused the process of law. He drew the attention of the circumstance that in the past Criminal Application No.43 of 2017 was filed by Respondent No.2 and in that matter he had made similar prayer. He submitted that in that matter on 26th May, 2017, order of issue process was made by the learned Judicial Magistrate First Class, Ahmedpur, for the offence punishable under Sections 420 of the Indian Penal Code, but only as against Accused No.1 Dhondiraj Lohare and the matter was dismissed as against Accused No.2 Gurunath. Accused No.3 was described as Auditor.

5 This Court has carefully gone through the allegations made in the private complaint, which was filed in the year 2017 and also the allegations made in the complaint which is filed in the year 2020. It is the contention of Ganesh Gulve that he is a member of Co-operative Housing Society, which is given name as Anand Nagar Society and Accused Dhondiraj Lohare is the Chairman of the society. He has contended in both the proceedings that no plot was allotted to him though he is a member and false record of allotment of plot is created. It is his contention that plot is not given in his possession of any member though it is shown that 62 plots are prepared from the land admeasuring 9 Acre 8 Guntha shown to be purchased for the housing society. In the first proceeding, he had contended that the

plots were not prepared and Accused Dhondiraj was using the entire land as his own land and he has deceived the members. In the present complainant also, similar allegations are made. There are other allegations like on 27th October, 2010, one plot was sold to other person by name Kotalwar Nagraj Ramakantrao when he was not even member. This allegation is in respect of transaction of 2010 and so in the matter of which cognizance is already taken in the year 2017, this contention can be considered by the Trial Court. Other allegation of creation of false record of audit etc., can also be considered in the matter of which cognizance is taken by the Magistrate. It can be said that as process was not issued against other Accused like Gurnath Pune, an attempt is made by the original complainant to see that action is taken against Gurnath Pune also. The Trial Court has ample power under Sections 311 and 319 of the Code of Criminal Procedure and other persons also can be made accused if there is material to make other persons accused. Thus, what can be achieved in the complainant of 2017 of which cognizance is taken by the Magistrate, need not be again investigated. In the year 2017, the learned Judicial Magistrate First Class had formed opinion that it will be a matter of record and complainant should be in a position to give evidence in respect of offence of cheating. The Court can also find out as to whether offence of forgery is committed. As it will be a

regular case, there will be evidence before charge and evidence after charge and so everything can be done in the complaint, which was filed in the year 2017.

6 Filing of one more complaint in view of the aforesaid circumstances, will create complication and it will be misuse of process of law. This Court holds that the new complaint and the order made by the learned Judicial Magistrate First Class of investigation and further action taken by police of registration of crime need to be quashed and set aside. In the result, the following order is passed:

ORDER

- I. The application is allowed.
- II. Relief is granted in terms of prayer clause (A).
- III. Rule is made absolute in those terms.

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE, J.]

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