

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 465 OF 2014

Shyamsundar Badrinarayan Vora,
Age about 70 years Occ.:- Business,
R/o. Wardha Plot No.9 behind SBI
Nagar Nalwadi, District Wardha.

....**APPLICANT**

// **VERSUS** //

1. The State of Maharashtra through
PSO Sevagram, Tq. And Distt. Wardha.

2. Smt. Ashma Safi Mohamad Safi Shekh,
Age 60 years, R/o. Chamansavli Camp,
Tapovan Road, Amravati.

.... **NON-APPLICANTS**

Ms. S.S. Pardhi, Advocate h/f. Shri B. D. Vora, Advocate for the applicant.
Shri T. A. Mirza, A.P.P for the non-applicant No.1/State.
Shri B. J. Lonare, Advocate for the non-applicant No.2.

**CORAM : Z. A. HAQ AND
AMIT B. BORKAR, JJ.**

DATE : 16.12.2020.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. By this application under Section 482 of the Code of Criminal Procedure, the applicant raised challenge to the registration of First Information Report No.167 of 2014 dated 28.04.2014 under Sections 406 and 420 of the Indian Penal Code with non-applicant No.1- Police Station.

2. The First Information Report came to be registered against the applicant on 28.04.2014 under Sections 406 and 420 of the Indian Penal Code. It was alleged in the First Information Report that on 11.11.1987, the applicant executed sale-deed in respect of plot No.82. It is further alleged that the sale-deed was effected on the basis of layout prepared by the applicant. It is alleged that on the basis of layout, the non-applicant No.2 was made to believe that plot No.82 was in existence and on the basis of said representation, the non-applicant No.2 purchased the said plot. It is alleged that in the year 2014 when the non-applicant No.2 went at the site, he found that the plot No. 82 is not in existence and the layout which was the basis of execution of sale-deed was not in existence. Therefore, the non-applicant No.2 filed First Information Report with the non-applicant No.1 – Police Station.

3. The applicant has therefore, challenged the registration of First Information Report by filing present application.

4. This Court, on 09.04.2015, admitted present application and directed investigation to be completed and restrained filing of charge-sheet without permission of this Court.

5. The non-applicant No.1 filed reply and stated that in the investigation, it is revealed that at the time of sale of plot No.82,

the applicant convinced non-applicant No.2 that there are 88 plots in the layout of Survey Nos.39/1, and 39/2. The applicant had obtained map of the layout and copy of N.A. order from the office of Tahsildar. On the basis of the layout, the non-applicant No.2 purchased the said plot. It is also stated that it has been found in the investigation that there is *prima facie* material against the applicant. The non-applicant No.1 therefore, prayed for rejection of application.

6. The non-applicant No.2 also filed his reply and stated that on the basis of false representation at the inception made by the applicant, the non-applicant No.2 has registered the sale-deed and has parted with consideration of amount of Rs.4,725/-. He therefore, prayed for rejection of application.

7. We have heard Ms. Shweta Pardhi, Advocate holding for Shri Bharat Vora, learned Advocate for the applicant and Shri T. A. Mirza, learned A.P.P. for non-applicant No.1.

8. Having considered the contents of First Information Report, we are satisfied that the powers under Section 482 of the Code of Criminal Procedure cannot be exercised in the facts and circumstances of the present case.

9. The learned Advocate for the applicant submitted that the transaction in question was of the year 1987 and the First Information Report is filed in the year 2014. Therefore, there is delay in filing First Information Report, which is unexplained.

10. We have considered the submissions on the basis of Section 468 of the Code of Criminal Procedure. We have also gone through Section 420 of the Indian Penal Code, which provides punishment for seven years. Since the punishment for the offence under Section 420 is seven years, there is no question of applicability of Section 468 of the Code of Criminal Procedure. Insofar as the point of delay is concerned, the same shall be considered at the time of trial when the prosecution is given opportunity to record the evidence.

11. Taking into consideration the facts and the circumstances of the present matter and the law laid down by Hon'ble Supreme Court in the case of *State of Haryana and ors. Vs. Bhajanlal and ors.* reported in **1992 Supp (1) SCC 335** and in the particular paragraph No.103, wherein the Hon'ble Supreme Court held that the power under Section 482 of the Code of Criminal Procedure has to be exercised in the exceptional and rare cases.

12. We therefore, pass the following order.

i. The Criminal Application No.465 of 2014 is rejected.

ii. The applicant is granted liberty to move appropriate proceedings after filing of charge-sheet, if permissible, according to law.

JUDGE

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