

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

CRIMINAL APPLICATION (APL) NO. 631/2013

- 1] Umesh Pandurang Agrawal,
Aged 37 years, Occ. Service
- 2] Ramesh Pandurang Agrawal,
Aged 42 years, Occ. Business

Both residents of Umarsara,
PS. Wadgaon Road,
Tq. & Dist. Yavatmal

.... **APPLICANT(S)**

// VERSUS //

- 1] The State of Maharashtra,
Through Police Station Officer,
Wadgaon Road, Tq. & Dist. Yavatmal
- 2] Sanjay Mahadeo Dafal,
Aged 35 years,
R/o. Plot No. 12, Suraj Nagar,
Near Jamankar Nagar (Umarsara),
Yavatmal, Tq. & Dist. Yavatmal

.... **NON-APPLICANT(S)**

Shri A.V. Bhide, Advocate for the applicant(s)
Shri S.S. Doifode, APP for the non-applicant no. 1

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.
DATED : 23/10/2020

ORAL JUDGMENT : (PER:- AMIT B. BORKAR, J.)

- 1] Heard.

2] This is an application under Section 482 of the Code of Criminal Procedure challenging F.I.R.No. 289/2013 dated 08/08/2013 filed by the non-applicant no. 2 with non-applicant no. 1 – Police Station.

3] It is the case of the applicants that the report which has been lodged by the non-applicant no. 2 with the non-applicant no. 1 – Police Station is an abuse of process of law inasmuch as there is no transaction between the applicant no. 2 and non-applicant no. 2. The suit which has been filed by the applicant no. 1 and his mother bearing R.C.S. No. 65/2007 has nothing to do with the rights of the non-applicant no. 2 as there is no transaction between the applicant no. 2 and non-applicant no. 2. The non-applicant no. 2 is not made party to the said suit. There are no details of transaction given by the non-applicant no. 2 with the applicant no. 2 and therefore filing of such first information report is nothing but an abuse of process of law.

4] The non-applicant no. 1 has contested the application by filing reply and it is stated that as per the allegations of the non-applicant no. 2, the applicants have hatched conspiracy to defraud the purchasers and in pursuance of the said design, R.C.S. No. 65/2007 for partition of lands of applicants has been filed in collusion. Therefore, it is submitted that there is

prima-facie case made out by the non-applicant no. 2 for initiation of proceedings against the applicants.

5] We have heard Shri A.V. Bhide, Advocate for the applicants and Shri S.S. Doifode, learned APP for the non-applicant no. 1 – State. The non-applicant no. 2 though has filed affidavit has remained absent during the hearing of the matter.

6] We have carefully considered the allegations made in the first information report. Though there are allegations in the first information report that there is collusion between the applicants and their mother to defraud the non-applicant no. 2, there are no details given either in the first information report or in the reply which has been filed by the non-applicant no. 2 in the present proceedings. In the application, there is specific averment made by the applicants that there is no transaction whatsoever between the applicant no. 2 and non-applicant no. 2 in respect of the immovable properties which is the subject matter of R.C.S. No. 65/2007. Once there is specific averment made in the application, it was bounden duty on the part of the non-applicant no. 2 to place on record the details of transaction with the applicant no. 2 as alleged in the first information report. In absence of details of transaction or atleast the details about passing of consideration of transaction which allegedly took place between the

applicant no. 2 and non-applicant no. 2, we find substance in the submission made on behalf of the applicants that filing of the first information report is an abuse of process of law.

7] The allegations in the first information report is to the effect that on the consent issued by the applicant no. 1, the applicant no. 2 has entered into the sale-deed with the non-applicant no. 2. It is also alleged that due to pendency of R.C.S. No. 65/2007, it has become impossible for the non-applicant no. 2 to sell the property which has been sold by the applicant no. 2. In the backdrop of the above allegations in the first information report, it was necessary for the non-applicant no. 2 to state in the reply which has been filed by the non-applicant no. 2 before this Court on 05/09/2014 as to when and how much amount was paid by the non-applicant no. 2 to the applicant no. 2. In absence of details of transaction not being furnished even during the pendency of present application till today, we find that the applicants are justified in their grievance that there is no transaction effected between the applicant no. 2 and non-applicant no. 2. Apart from the above circumstances, the non-applicant no. 2 has not initiated any civil proceedings to ventilate his alleged grievance as regards the transaction which finds mention in the first information report. With the result, we are satisfied that no transaction has taken place between the applicant no. 2 and non-applicant no. 2 in respect of the immovable properties which is the subject matter of

R.C.S. No. 65/2007. Once it is undisputed that there is no transaction between the applicant no. 2 and non-applicant no. 2, there is no question of defrauding the non-applicant no. 2 or essentials of an offence under sections as alleged in the first information report being satisfied. In view of the above circumstances, we find that initiation of criminal proceedings against the applicants is nothing but an abuse of process of Court and this is a fit case to invoke jurisdiction under Section 482 of the Code of Criminal Procedure.

8] We therefore pass the following order :-

F.I.R. No. 289/2013 dated 08/08/2013 filed by the non-applicant no. 2 with the non-applicant no. 1 – Police Station for the offences punishable under Section 420 read with Section 34 of the Indian Penal Code (Annexure I) is quashed and set aside.

The criminal application stands **allowed** in the above terms.

JUDGE

JUDGE