

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

939 CRIMINAL APPLICATION NO.59 OF 2021

1. Prashant Prakash Zaware
 2. Vanita Prashant Zaware
 3. Pravin Prakash Zaware
 4. Prakash Kondaji Zaware
 5. Sharda Prakash Zaware
- ...Applicants

versus

1. The State of Maharashtra and another
 2. Yogesh Balkrishna Gethe
- ...Respondents

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Advocate for Applicants : Mr. Satyajeet S. Dixit
APP for Respondent No.1-State: Mr. R.D. Sanap
Advocate for Respondent No.2 : Mr. K.N. Shermale
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**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 1st DECEMBER, 2021**

PER COURT:-

1. Learned counsel for the applicants submitted across the bar additional affidavit of the applicants alongwith certain documents. Copy of the same is given to the other side today itself in the court. Learned counsel for respondent No.2 submits that he is ready with the matter.

2. We have heard learned counsel for the parties for some time. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant Nos. 1 to 3 i.e. Prashant Prakash Zaware, Vanita Prashant Zaware and Pravin Prakash

Zaware, respectively. Leave granted. The application of applicant No.1 Prashant, applicant No.2 Vanita and applicant No.3 Pravin is dismissed as withdrawn.

3. The applicants original accused are seeking quashing of F.I.R. bearing crime No. 1996 of 2021 registered with Sangamner city police station, Tq. Sangamner, district Ahmednagar for the offences punishable under sections 420, 504, 506 r.w. 34 of I.P.C.

4. The co-accused Prashant wanted to sell the land admeasuring 10 gunthas out of land survey No.45 standing in the name of co-accused Vanita and co-accused Pravin. Respondent No.2 original complainant had agreed to purchase the said land for consideration amount of Rs.40,00,000/-. Since there were family relations between two families and in consequence thereof, respondent No.2 allegedly gave entire consideration amount to co-accused Prashant, co-accused Vanita and co-accused Pravin. It has been alleged that co-accused persons have approached respondent No.2 for selling the said land out of financial crunches. Thus, considering the relations between two families, respondent No.2 allegedly gave the said amount to the co-accused persons. However, subsequently, it was noticed by respondent No.2 that the said land cannot be mutated in the name of purchaser. Thus, by executing an agreement, the transaction was cancelled on 24.5.2016. Co-accused No.1 Prashant, Co-accused No.2 Vanita and co-accused No.3 Pravin are the parties

to the said agreement. In terms of the said agreement, co-accused persons Prashant, Vanita and Pravin agreed to refund the said consideration amount to the tune of Rs.40,00,000/- and for that purpose issued cheques. However, those cheques came to be dishonoured subsequently. Thus, respondent No.2 has lodged the complaint against co-accused persons and also against the present applicants, alleging therein that right from inception there was intention to cheat respondent No.2. Though accused persons and present applicants were knowing that even if transaction is completed, the land cannot be mutated in the name of purchaser, entered into the transaction with respondent No.2 and obtained from him the huge amount of consideration. On the basis of these allegations made in the complaint, the aforesaid crime came to be registered.

5. Learned counsel for the applicants submits that the allegations have been made mainly against co-accused Prashant, co-accused Vanita and co-accused Pravin, whose application seeking quashing of F.I.R. came to be withdrawn today. So far as the applicant Prakash and applicant Sharda are concerned, they are parents of co-accused persons. Learned counsel has pointed out from the allegations made in the complaint that there are mere allegations to the effect that on one occasion i.e. on 24.2.2016, co-accused persons and these applicants had been to the hospital of respondent No.2 for talks in respect of the said transaction. Learned counsel

submits that even though in the subsequent part of complaint there are certain allegations that the consideration amount has been paid to all co-accused persons and the applicants, however, these applicants are not party to the agreement dated 24.5.2016 and as such, their role is limited as alleged in the complaint that they were present at once or twice for the talks in respect of transaction.

6. Learned counsel for respondent No.2 submits that the names of applicants are mentioned in the F.I.R. alongwith co-accused persons. All accused persons, including present applicants in furtherance of their common intention right from inception cheated respondent No.2 by entering into transaction with the knowledge that said transaction could not be completed by executing the document. Learned counsel submits that there is triable case against these applicants also. There is no substance in this application, the application is liable to be dismissed.

7. Learned A.P.P. for the respondent State submits that there is triable case as against these applicants and this application is liable to be rejected.

8. On careful perusal of contents of complaint, it appears that the allegations have been made mainly against co-accused Nos. 1 to 3 i.e. Prashant, Vanita and Pravin, respectively. It appears from the allegations made in the complaint that in the year 2015, co-accused

Prashant and respondent No.2 came in contact with each other and thereafter they became friends. It is further alleged in the complaint that co-accused Prashant thereafter disclosed to respondent No.2 that the land survey No.45 admeasuring 10 gunthas standing in the name of his wife co-accused No.2 Vanita and his brother co-accused Pravin and he wanted to sell that land due to some financial difficulties. It further appears that on 24.2.2016, all accused persons, including the applicants went to the hospital of respondent No.2 for talks about the said transaction and accordingly consideration amount was fixed. It further appears that the allegations have been made against co-accused persons about accepting consideration amount from respondent No.2 by representing him their financial difficulties. It further appears that the said transaction was cancelled when it appears to respondent No.2 that the said transaction could not be completed due to some technical flaw. Accordingly, one another agreement came to be executed on 24.5.2016. However, these applicants are not parties to the said agreement and only co-accused Nos. 1 to 3 i.e. Prashant, Vanita and Pravin, respectively, are the parties to the said agreement. In terms of the said agreement, co-accused have agreed to refund the amount to respondent No.2 and accordingly issued certain cheques for the said amount as detailed in the agreement, however, those cheques came to be dishonoured subsequently. It further appears from the details of those cheques as mentioned in the agreement that the said cheques have been issued from the account of co-accused Prashant,

co-accused Vanita and co-accused Pravin. In view of the same, though names of the applicants are mentioned in the F.I.R., however, the allegations about acceptance of consideration amount prior to the said agreement as against the applicants appears to be vague and absurd. Even if those allegations as against the applicants are held to be proved, no triable case is made out against them. Co-accused Nos. 1 to 3 i.e. Prashant, Vanita and Pravin, against whom allegations have been made mainly, have withdrawn their application seeking quashing of F.I.R. The applicants are parents of applicant Nos. 1 and 3 and it appears that the allegations have been made against them with some oblique motive. Thus, considering entire aspect of the case, we are inclined to quash the F.I.R. as against these applicants. Hence, we proceed to pass the following order:-

O R D E R

- I. Criminal application is allowed in terms of prayer clause "A" to the extent of applicant No.4 Prakash Kondaji Zaware and applicant No.5 Sharda Prakash Zaware.
- II. Criminal application is accordingly disposed of.

(SANDIPKUMAR. C. MORE, J.)

(V. K. JADHAV, J.)

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