

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 251 OF 2020

1. Mohammad Ismail s/o. Shaikh Usman,
Age 72 years, Occu. Pensioner,
R/o. Ayan Colony, Near Galaxy Hotel,
Bhusawal, Tal. Bhusawal,
District Jalgaon.
2. Mohammad Shakil s/o. Shaikh Usman,
Age 54 years, Occu. Teacher,
R/o. Paldhi, Taluka Dharangaon,
District Jalgaon.
3. Shaikh Iqbal s/o. Shaikh Usman,
Age 64 years, Occu. Pensioner,
R/o. Ganeshpuri, Mehrun,
Taluka & District Jalgaon.

....Applicants.

Versus

1. STATE OF MAHARASHTRA
At the instance of Bazarpeth Police
Station, Bhusawal, Taluka Bhusawal,
District Jalgaon,
Through its Police Inspector,
Police Station Gondi,
Tq. Ambad, Dist. Jalna.
2. Dr. Ejaj Ahmed Khan,
Age 64 years, Occu. Business,
R/o. Khadka Road, near Lala Building,
Bhusawal, Tal. Bhusawal,
Distt. Jalgaon.

....Respondents.

Mr. Naseem R. Shaikh, Advocate for applicants.

Mr. G.O. Wattamwar, APP for respondent No.1/State.

Mrs. A.N. Ansari, Advocate for respondent No. 2.

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

DATED : 14/01/2021.

JUDGMENT : [PER T.V. NALAWADE, J.]

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

2) Present proceeding is filed for relief of quashing of C.R. No. 78/2018 registered with Bazarpeth Police Station, Bhusawal, District Jalgaon for offences punishable under sections 420, 406, 468, 471 and 34 of Indian Penal Code. Case is also filed which is bearing R.C.C. No. 135/2019 and which is pending in the Court of Judicial Magistrate, First Class, Bhusawal and relief is claimed in respect of that case also.

3) Crime is registered on the basis of report given by respondent No. 2, who is brother of the wife of applicant No. 1. Applicant Nos. 2 and 3 appear to be brothers of applicant No. 1. It is contended that after the marriage with the sister of informant, applicant No. 1 represented that he wanted to start school at Paldhi, District Jalgaon and for that he wanted land. It is contended that present applicants registered the institution with trust office and informant was also shown as a trustee and school was started on the land which was made available by informant. It is contended that the name of grandfather of informant was given to that primary school.

4) It is contention of the informant that in the year 2005 applicant No. 1 obtained land of Municipal Council, Bhusawal and there, he shifted the school. It is contended that for making construction of the building of the school on that land, amount was collected from different persons including informant and he had

given amount of Rs.1.5 lakh for construction.

5) It is contention of the informant that in the year 2014 there was some dispute in the management of the school and so, informant asked the applicant No. 1 to show the record. It is contended that applicant No. 1 did not show the record and then he gave *Talak* to the sister of informant. It is contended that applicant No. 1 had then said that he had cheated the informant and others. It is contended by the informant that when he made inquiry, he realized that his name was not shown as trustee in the record under which the land was obtained from Municipal Council. It is contended that this is how the applicants have deceived him.

6) The submissions made and the record show that there is some dispute in respect of the management of the aforesaid school between the applicants on one hand and informant on other. The record also shows that there was some matrimonial dispute and when initially applicant No. 1 was under shelter of the family of informant, subsequently he became independent and then the dispute started. It is not disputed that there was *Talak* between applicant No. 1 and the sister of informant.

7) Even if it is accepted that some amount was given by the informant to applicant No. 1 for making construction of the school, it is not the contention that this amount was given as a loan. On the

contrary, there is some record with applicant No. 1 to show that he had given some amount to informant and the dispute started when applicant No. 1 had demanded back amount from sister of informant. Thus, the dispute is of different nature. The contentions made in the F.I.R. did not make out the case of cheating.

8) The learned counsel for informant placed reliance on some observations made by the Apex Court in following cases :-

(i) AIR 2006 SUPREME COURT 2780 [M/s. Indian Oil Corporation v. M/s. NEPC India Ltd. and Ors.]

(ii) AIR 2013 SUPREME COURT 506 [Satish Mehra v. State of N.C.T. of Delhi and Anr.].

The facts and circumstances of each and every case are always different. In the cases cited supra, the Court had refused to quash F.I.R., but in view of the facts of the present matter, this Court holds that there is no case at all of cheating and it will be abuse of process of law if the applicants are directed to face the trial for aforesaid offences. In the result, following order.

ORDER

Application is allowed. Relief is granted in terms of prayer clause 'A'.

Rule is made absolute in those terms.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

SSC/