

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

CRIMINAL APPLICATION (APL) NO: 474/2021

(Umesh Kewal Krishan Sahani and others vs. The State of Maharashtra & another)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Mr.Parag Bezalwar, Adv. for the applicant/s
Mr. T.A. Mirza, APP for non-applicant no.1
Mr. D.V Chauhan, Adv.for non-applicant no.2

**CORAM : V. M. DESHPANDE &
AMIT B. BORKAR, JJ.**

DATED : 28th September, 2021

Heard learned counsel for respective parties.

2. By this Application under Section 482 of the Code of Criminal Procedure, the applicants are challenging registration of first information report No.207/2021 dated 2nd April,2021 registered with non-applicant No.1-Police Station, for offences punishable under sections 506, 420, 466, 468, 471 read with section 34 IPC.

3. The First Information report came to be registered against the applicants with the accusation that the non-applicant no.2 entered into an agreement with applicant no.1 on 20th June, 2020 in relation to the property in dispute and accepted an amount of Rs. 40 lakhs from time to time. At the time of execution of the sale deed i.e. on 24th July 2020 when the non-applicant no.2 enquired with the applicant no.1 regarding the share of the persons having right in the property, the applicant no.1 issued no objection certificate/relinquishment-deed to the non-applicant no.2. It was further informed that the sisters of applicant no.1 have filed Civil suit in relation to the property which

was the subject matter of an application. Realising the illegality in execution of the sale-deed, the non-applicant no.2 lodged first information report against the applicants. The applicants have therefore challenged the first information report by filing the present Application.

4. This Court issued notice to the non-applicants on 9th April, 2021 subject to the condition that the applicant no.1 shall deposit an amount of Rs. 5 lakhs with the Registry of this Court. It is stated by Advocate for the applicants that accordingly the amount has been deposited by the applicant no.1 within the time stipulated in the order of this Court.

5. The non-applicant no.1-Investigating agency has filed reply stating that during the course of investigation, the I.O. has collected sufficient material against the applicants including agreement to sell and the affidavit sworn by the applicant no.1 dated 6th April, 2020 whereby the applicant no.1 has stated that he is the sole legal representative in relation to the property in dispute. It is stated that the applicant no.1 made to believe the non-applicant no.1 that he is an exclusive owner of the property and therefore ingredients of the offences against the applicants are satisfied.

6. The non-applicant no.2 has filed reply stating that the material collected by the investigating officer along with the documents are sufficient to satisfy the ingredients of the alleged offences.

7. We have carefully scrutinized the allegations in the FIR, the relevant material and the reply filed by the Investigating officer and the non-applicant no.2. It appears that at the inception of the transaction the applicant no. 1 was aware of the fact that his title was under the cloud till he persuaded the non-applicant no.2 to part with the amount of Rs. 40 lakhs. *Prima facie*, dishonest intention on the part of the applicant no.1 is apparent at the inception of the transaction. However, at this stage we cannot go into the truth or otherwise of the allegations made by the non-applicant no.2 against the applicants. We are therefore of the opinion that *prima facie*, the ingredients of the offence alleged against the applicants are satisfied.

8. For the reasons aforesaid, there is no merit in the application. The Application is therefore, dismissed. The interim order granted by this Court stands vacated.

9. The Registry is directed to return the amount of Rs. 5 lakhs along with interest accrued, if any, to the applicants.

JUDGE

JUDGE

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