

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

CRIMINAL APPLICATION (APPLN) NO.29 OF 2020

(Mobin Ahmed s/o Haji Abdul Khaliq Vs. State of Maharashtra thr. PSO PS
Kamptee, Dist. Nagpur and others)

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

Court's or Judge's orders.

Mr. Syed Owais Ahmed, Advocate for Applicant.
Mr. V.A. Thakare, APP for Non-Applicant 1/State.
Mr. Saud Afsar, Advocate for Non-Applicant 2 & 3.

CORAM: ROHIT B. DEO, J.

DATE: 11th JANUARY, 2021.

The applicant is seeking cancellation of pre-arrest protection granted to the non-applicant – accused in Crime 8/2020 registered with the Kamptee Police Station, Nagpur for offences punishable under sections 420, 467, 468, 469, 471 read with section 34 of IPC.

2. The crime is registered on the basis of the report dated 19.01.2020 lodged with the Kamptee Police Station, by the applicant herein.

3. The applicant herein is the younger brother of accused 1 Mushtaq Ahmed, who died on 03.08.2020. Non-applicant 2 herein is the wife of deceased Mushtaq Ahmed and the non-applicant 3 is the son, who are arraigned as accused 2 and 3 respectively.

4. The gist of the report is that the applicant – informant, his elder brother deceased Mushtaq Ahmed and non-applicant 2 and 3 herein jointly purchased land admeasuring khasra 165/3 (new khasra 140/9) admeasuring 3033 sq.ft. from Rameshwar Joshi by registered sale-deed dated 07.08.1986. It is alleged that deceased Mushtaq Ahmed, as the elder in the family, was looking after every transaction concerning the said land. It was only on 18.03.2019 or sometime prior to that day, that the applicant learnt that his name is not shown as a joint owner in the record of right. The applicant gathered the said information when he visited Gram Panchayat, Yerkheda to obtain the tax receipt. The applicant probed further and learnt that the accused had obtained certified copy of the sale-deed from the office of the Sub-Registrar, Kamptee, then deleted/scratched his name from the certified copy and on the basis of forged document deleted the informant's name from the record of right.

5. The material which is made available for my perusal reveals that the non-applicants 2 and 3 and deceased Mushtaq Ahmed have instituted suit for possession relying on a certified copy which ostensibly makes no reference to the informant's name as owner. Be that as it may, it is common ground that in view of the order passed by the Tahsildar, the informant's name is restored in the record of right. It is informed that the said order of the Tahsildar is challenged by the non-applicants 2 and 3 – accused.

6. The submission of Mr. Ahmed that there is a *prima facie* case against the accused, cannot be brushed under the carpet. However, the fact that there is a *prima facie* case, assuming *arguendo*, that there is, would not necessarily call for this Court interference in the pre-arrest protection.

7. Accused 1 has died. Accused 2 – non-applicant 2 is a senior citizen now aged 75 years. Accused 3 Ashfaque is aged 56 years. That apart, I do not see any reason why custodial interrogation is necessary. The alleged scratching etc. is in relation to a certified copy. The disputed document is placed on record in the civil court by the accused themselves. Even assuming that the investigation is ongoing, the same shall not be hampered if the pre-arrest protection is not interfered with.

8. In this view of the matter, I do not propose to interfere with the order impugned.

9. The application is disposed of.

JUDGE