

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

CRIMINAL APPLICATION [ABA] NO. 564 OF 2021.

Shivshankar Shamrao Vanjari.

-VERSUS-

The State of Maharashtra, through P.S. Parseoni, District Nagpur.

CRIMINAL APPLICATION [ABA] NO. 480 OF 2021.

Madan Nanku Bharti.

-VERSUS-

The State of Maharashtra, through P.S. arseoni, District Nagpur.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

S/Shri S.P. Sonwane & S.R. Kadam, h/f. R.R. Vyas,
Advocates for the Applicants.

Shri A.M. Deshpande, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 29, 2021.

Heard.

2. Both applications arise out of Crime No.30/2021, registered with the non-applicant – Parseoni Police Station, District Nagpur for the offence punishable under Sections 420, 467, 468, 471, 120-B read with Section 34 of the Indian Penal Code.

3. The informant – Kailash Meshram has lodged a report on 13.02.2021 against applicants and co-accused. The informant owns agricultural land

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bearing Survey No. 24/1 situated at Mouza Banpuri, Tahsil Parseoni, District Nagpur. He learnt from his nephew that an application has been made to carry out mutation on the basis of a Sale-deed executed by the informant Kailash in respect of his agricultural land. Since the informant had not sold his land, on enquiry he came to know that the concerned Sale-deed was executed by some fictitious person posing him to be informant Kailash, to a purchaser namely Balshankar Mishra. The informant met the purchaser on which he learnt that the sale transaction was got executed through applicant Shivshankar Vanjari. The informant met the applicant Shivshankar, however, he blamed other co-accused. Moreover, on the said fictitious sale-deed, consent of wife of informant was also taken by impersonating his wife. Since the informant was cheated, he has filed report, on which the police had registered the aforesaid crime.

Another applicant Madan Bharti, stood as witness to the said fictitious transaction in which he has falsely identified two fictitious persons in the office of the Sub Registrar, while executing the sale-deed.

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4. The applicant Shivshankar stated that he was not acquainted with the person who has posed himself as land owner Kailash Meshram. He would submit that the fictitious person was introduced to him as Kailash Meshram by other three co-accused. He submitted that though he has received an amount of Rs. 2.50 lakhs by cheque from the purchaser, however, he has immediately handed over the same to the seller on its withdrawal. Further it is submitted that since the purchaser Mishra, has pressurized him, by sale of his own land, he refunded the amount of Rs. 5 lakhs to Mishra. Thus, by claiming innocence, he prayed for grant of protection.

5. Applicant – Madan Bharti, stated that he being neighbourer of the purchaser Mishra, at his behest went to the office of the Sub Registrar and gave identification. According to him, he has no role in the transaction, nor aware that the sale deed was executed by a fraudster. It is also submitted that he has not received any amount in the said transaction, and he being mere witness, he be protected.

6. The State has resisted bail applications, by

filing reply-affidavits. The story in brief as stated in the police report has been reproduced. It is contended that both applicants by hatching conspiracy have got executed sale-deed with the aid of two fictitious persons. According to the State, applicants can only be in a position to trace the identity of both fictitious persons, who themselves posed in the office of the Sub-registrar as Kailash Meshram and his wife. Moreover, it is stated that a forged Aadhar card in the name of land owner was used, which requires investigation. In short, unless custodial interrogation is made with both applicants, there would be no effective investigation.

7. Perused case papers, disputed sale deed, annexures and various statements recorded by the police during the course of investigation. It has come in the statement of informant, that the applicant Shivshankar has arranged for the said sale transaction. The statement of purchaser Mishra discloses that another applicant Madan Bharti is his neighbourer. At the instance of Madan Bharti, the sale transaction was settled. Moreover, Madan Bharti has called the so called Kailash Meshram at his shop and introduced him

with the purchaser Mishra. Besides, that there are statements to indicate that the applicant Shivshankar has posed fictitious persons as owner, while arranging the transaction.

8. Pertinent to note that the applicant Shiv Shankar has received Rs.2.50 lakhs from the purchaser. In normal transaction, there was no reason for the middleman to receive part consideration. Though the applicant Shiv Shankar stated that lateron he refunded most of the amount to Mishra, that would not exclude his culpability.

9. The statement of Sub-Registrar discloses that the applicant Madan Bharti has identified the parties of sale deed in the office of the Sub-registrar. Thus, prima facie it is evident that both applicants have managed to execute the sale-deed by bringing a fictitious owner and his wife in the office of the Sub-registrar. Unless custodial interrogation is made, the investigation cannot proceed in locating both the fictitious persons and tracing of original fabricated aadhar card and related documents. Moreover, the payment of consideration made to fictitious owners is

to be recovered. If applicants are released, then there would be no effective investigation. Having regard to the fact that with deceitful intention, a document was got registered in public office with the aid of fictitious persons, is a serious affair. The matter requires thorough investigation. In view of that, both applicants are not entitled for grant of pre-arrest protection. Both Criminal Applications are accordingly rejected.

Rgd.

JUDGE