

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO. 872 OF 2022

Bajirao Hiralal Chandanshive & Ors.

...Applicants

Versus

The State of Maharashtra

...Respondent

.....

Mr. A. D. Sonkawade h/f Mr. S. M. Gaikwad, Advocate for the
applicants

Mr. M. M. Nerlikar, APP for respondent/State

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**CORAM : SMT. VIBHA KANKANWADI
AND
RAJESH S. PATIL, JJ.**

DATE : SEPTEMBER 19, 2022

ORAL ORDER [PER RAJESH S. PATIL, J.] : -

1. By this application filed under Section 482 of the Code of Criminal Procedure and under Article 226 and 227 of Constitution of India, the applicants seek quashing of FIR No. 223/2007 registered with Sadar Bazar Police Station, Jalna, for the offences punishable under Sections 120B, 420, 467, 468, 471, 109 r/w 34 of the Indian Penal Code and under Sections 13(1)(d)(2) and 13(2) of the Prevention of Corruption Act and the Charge-sheet No. 154 of 2017 to the extent of the present applicants, who are arraigned as accused nos. 10 to 15. The applicants also seek quashing and setting aside of the order dated 07.09.2021 passed by learned Additional Sessions Judge-1, Jalna, on an application at Exh. 29 filed in Spl. (ACB) No. 32 of 2017.

A] FACTS : -

2. The case of the prosecution, in nutshell, is that the accused persons in conspiracy with the revenue officers as well as the officers and the officials from the office of Taluka Inspector, Land Records got mutated their names to the Government land bearing Survey No. 204/1 on the basis of a document viz. Kabala and revenue officers prepared 7/12 extracts, divided the survey numbers by showing the separate survey number 204/1 in the names of accused persons/applicants and thereby grabbed government land.

3. It is the contention of the applicants that they have received 2 Hectar 40 Are land out of Survey No. 204/1 from their grand father, namely, Anantrao Laxman Chandanshive, who had received the said land from Nizams on the basis of one document called "Kabala" and, therefore, they had applied for mutating their names to the said land and accordingly, Tahsildar, Jalna issued the directions and on the basis of said directions, Talathi had taken the said mutation entry, which was duly approved as per the procedure. Therefore, there is no conspiracy between the present accused and remaining accused persons for mutation in their names in the revenue record and therefore they had filed application for discharge. The said application has been rejected vide order dated 07.09.2021 and, therefore, they have approached this Court for quashing and setting aside the same.

B] SUBMISSION OF PARTIES : -

4. Learned advocate Mr. A. D. Sonkawade holding for Mr. S. M. Gaikwad for the applicants submits that the applicants have been falsely implicated in the present offence. The applicants are, in fact, sgp

in possession of the land in question since the year 1925. The applicants had made an application to the competent authority thereby requesting for regularization of their possession over the aforesaid land in view of their long standing possession over the same for a period of more than 90 years. He further submitted that the applicants had moved an application for the sub-division of the said land in order to get equal share in the name of each of the applicants to the extent of 40R and in pursuance thereof, Mutation Entry No. 3250 dated 12.12.2001 came to be recorded into the revenue records to that effect. He further submitted that, it is *ex facie* manifest that the applicants have adhered to the due procedure of law prescribed in the Maharashtra Land Revenue Code, 1966 and the Maharashtra Land Revenue (Revenue Survey and Sub-divisions of Survey Number) Rules, 1969 *vis-a-vis* the recording of Mutation Entry No. 3250 and indeed have not committed any crime, much less, any of the acts alleged to have been committed as indicated in the crime.

5. Learned counsel for the applicants further submitted that the applicants have resorted to the lawful means in order to seek regularization of the land in their possession by various applications. There is no dispute *vis-a-vis* the genuineness of the documents annexed to this application *vis-a-vis* the case of the applicants and hence the allegations made in the crime as against the applicants are *prima facie* false and frivolous. The applicants have no role in the commission of the crime. The applicants have neither committed any overt act nor conspired/colluded with the other accused persons *vis-a-vis* the alleged crime, and in view thereof, the indictment of the applicants and/or the charges levelled against the applicants are *ex facie* ill-founded and sheer abuse of process of law. He further submitted that this is purely a dispute of civil nature and there is no iota of any criminal act committed by the applicants and the
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continuation of the criminal prosecution against them is a sheer abuse of process of law. The indictment of the applicants in the crime is *ex facie* frivolous and illegal and hence the said crime and charge-sheet filed against the applicants be quashed against the applicants. The implication of the present applicants in the crime is *per se* with the sole purpose of causing sheer harassment to the applicants. There are vague, baseless, wild and incorrect allegations against the present applicants. The material collected during the investigation of the crime does not indicate any specific role attributable to the applicants in committing the alleged crime. The implication of the applicants in the present crime is because of the local politics and with oblique motive and only with a view to harass the applicants. Hence, he prayed for quashing and setting aside the FIR and the proceedings arising therefrom and the order impugned herein.

6. Learned APP strongly opposed the application and argued that there are serious allegations against the applicants. The applicants have played fraud on the Government. He further submitted that present applicants had filed an application for discharge before the learned Addl. Sessions Judge, Jalna and the said application came to be rejected vide order dated 07.09.2021. The applicants have approached this Court after a lapse of one year from the date of passing the impugned order. The delay in approaching this Court is unexplained. Hence, the application be rejected.

C] **ANALYSIS : -**

7. The application for discharge was filed before the learned Addl. Sessions Judge, Jalna, on 22.02.2019. The said application came to be rejected by order dated 07.09.2021. The FIR is filed in the matter on 17.10.2007 whereas; the present application for
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quashment of the same is filed after a lapse of fifteen years of registration thereof. In the present application, the applicants have prayed for quashing of the FIR and the charge-sheet and the order passed in the application for discharge.

8. The applicants claim that they are in possession of the land through a document called as 'Kabala'. The applicants state that the said document can be termed as 'Grant'. According to applicants, the 'Kabala' was granted to their forefathers by the Nizams who were the Rulers at that time. However, the applicants have not produced the copy of said 'Kabala' for the reason best known to them. The applicants are also not able to explain as to how in the year 1982, all of a sudden they started the process of effecting entries in the revenue record pursuant to a document 'Kabala', which according to the applicants, was executed in the year 1925.

9. The APP has shown us a order dated 07.09.2021 passed by Id. Addl. Sessions Judge-1 in Order below Exh. 29. In the said order it is concluded that the genuiness of documents produced by the accused in respect of alleged 'Kabala' in favour of their grand father can be considered only after evidence on merits. Except, the 'Kabala' documents which nowhere described the land property, no other document produced by the accused to show their possession over the land since the time of their grand father. The case of prosecution is that the applicants have played fraud on the Government authorities as regards the subject land, on the basis of purported document called as 'Kabala'. The applicants have further sub-divided the land and have created third party interest in it.

10. In the case at hand, the applicants have completely failed to point out any error committed by the learned Sessions Judge by
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passing the impugned order. Further, the delay caused on the part of applicants in approaching this Court is unexplained. The applicants have utterly failed to make out the case to be interfered by this Court in order to exercise inherent powers. In view of all these circumstances, the FIR so also the criminal proceedings arising therefrom and the order impugned cannot be quashed and set aside at this stage. The application therefore requires to be rejected. Hence the following order.

ORDER

[i] The Criminal Application stands rejected.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE