

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.908 OF 2022

Anumati w/o. Chandrakant Paddhariya .. Applicant.

Versus

1] The State of Maharashtra through Police Station
Officer, Peth Beed Police Station, Beed.

2] Maltiben W/o. Ramniklal Paddhariya
Age 65, R/o. Vipra Nagar, Beed, Tq. & Dist. Beed. .. Respondents.

Advocate for Applicant : Mr. Rathi Swapnil S.

APP for Respondent No. 1 : Mr. A.M. Phule

Advocate for Respondent No. 2 : Mr. S.S. Deshmukh

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

DATE : 27th September, 2022.

ORDER :-

1. The present application has been filed by the application by invoking inherent powers of this Court under Section 482 of Cr.P.C. for quashing the FIR for vide Crime No. 12 of 2022 registered with Peth Beed Police Station, for the offence punishable under Sections 420, 467, 468, 471 of the Indian Penal Code, launched at the behest of the respondent No.2 against applicant.

2. Heard Mr. Rathi, learned counsel for the applicant, Mr. A.M. Phule, learned APP for respondent No.1 and Mr. S.S. Deshmukh for respondent No.2.

3. The learned counsel for the applicant submits that the respondent No.2 had sold the land in question to the applicant. They were residing together alongwith other family members till 2011. In respect of the plot of which portion was purchased by applicant from the

respondent No. 2, a registered sale deed was executed on 31.12.2001. One Balu Narayandasji Mundada and Gautam Madanlal Jain were witnesses to the said sale deed. Thereafter, mutation was carried out in the PTR extract Register. There is a PTR extract produced which would clarify that mutation was effected on 10.6.2003. Thereafter, the electricity connection was in the name of the applicant. She has paid taxes to the Municipal Council, Beed, since the date of purchase and receipts to that effect have been produced on record. Due to the old age, the applicant has gifted the said plot to her two sons by executing registered Gift Deed on 24.9.2019. Thereafter, also mutation has been carried out and further taxes have been paid by the applicant. Now, the said FIR has been registered on 14.01.2022, contending that the said sale deed was the outcome of impersonation as a result of fabrication of documents and it amounted to cheating. However, prior to that, a complaint application was filed by the informant with the same police station on 10.5.2021 on which inquiry was made by the police and report was given by the Police Inspector, Peth Beed police Station on 28.10.2021. At that time also, statement of witnesses were recorded and it was concluded that the complaint application that was filed by the present respondent No.2 is false. In fact, the respondent and her family members were insisting that the vacant plot which was in the name of the deceased husband of the applicant, should be given in their name. When that request was refused, the respondent No.2 and her family members were annoyed. The FIR which is now lodged, it is the outcome of malafides and it would be under these circumstances a futile exercise to ask the applicant to face the trial. He has prayed for quashment of the FIR.

4. The learned APP submit that investigation is still pending. Though earlier inquiry might have been made, yet when the present FIR has been lodged stating about the impersonation, the thumb marks and specimen handwriting has been collected. The applicant was not cooperating with the investigation and when directed to produce the original sale deed, it was avoided on one or the other pretext. Under such circumstance, when the investigation is still pending, it will not be appropriate to quash the FIR.

6. The learned counsel Mr. S.S. Deshmukh, representing the respondent No.2 also strenuously opposed the application and submitted that since there was impersonation and in the FIR itself the informant has clarified that she was under the impression that her name is still continued till 2011, has paid taxes through the son of the applicant. The matter needs to be investigated.

7. At the outset, fact is required to be considered that earlier when the application which was made by the respondent No.2 on 10.5.2021 was inquired and the report was submitted by the DSP of Peth Beed Police station, that requires to be considered here. After due inquiry, including the recording of statement of witnesses who were present at the time of execution of the sale deed, it was concluded that such document was executed by the respondent No.2 in their presence. Under such circumstances, where is the question of impersonation. The witnesses would be the best person to identify not only the person but also as regards execution of the document. Even now also, it can be seen from the police papers that the statement of Gautam Jain has been recorded on 17.1.2022 and Balu @ Balkrishna Narayandas Mundada.

These two witnesses were the witnesses to the said document which was executed on 31.12.2001. It is a registered instrument and, therefore, it has its own presumption under the Indian Registration Act. Merely now stating that she was not present, it can not be taken that there is nothing *prima facie* in the FIR. Further, even the property extract would show that mutation was carried out on 10.6.2003. It is a public document and can be considered at this stage. Thereafter, there are various receipts showing deposit of taxes by the applicant. Another fact then required to be noted is that, the Gift Deed has been executed by the applicant on 29.4.2019. It is also a registered instrument and therefore, it has its own sanctity and presumption. It has been further reflected in the Property Register Card.

8. All these documents and police papers would show that it would be a futile exercise to ask the applicant to face trial. At the cost of repetition, it can be said that when the same investigating agency had come to the conclusion earlier that, there is no substance in the allegation made and then, again the same investigating agency cannot be allowed to take up the investigation of the same allegation. Therefore, a case is made out for the exercise of inherent powers of this Court under Section 482 of the Code of Criminal Procedure. As the case is within the parameters laid down in the case of “State of Haryana Vs. Bhajan Lal and others”, the application stands allowed in terms of prayer clause (C).

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)