

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

925 CRIMINAL APPLICATION NO.1822 OF 2021

- 1 Lalit Parasmal Chandaliya (Jain),
Age 52 yrs., Occ. Business,
R/o Flat No.B-103, Disha Karizma Apartment,
Anguribag, Aurangabad.
- 2 Shobhadevi Sohanraj Dhoka,
Age 58 yrs., Occ. Housewife,
R/o Kuwarfalli, Rajabazar,
Aurangabad.

... **Applicants**

... **Versus** ...

- 1 The State of Maharashtra,
Through CIDCO N-7 Police Station,
Aurangabad.
- 2 Vidya Pramod Babhulgaonkar,
Age 50 yrs., Occ. Service,
R/o Flat No.19, Anuyog Apartment,
Nandigram Colony, in front of Gajanan Temple,
Garkheda, Aurangabad.

... **Respondents**

...

Mr. A.C. Deshpande, Advocate for applicants

Mr. S.J. Salgare, APP for the respondent No.1

Mr. V.P. Bakal, Advocate for the respondent No.2

...

WITH

CRIMINAL APPLICATION NO.2123 OF 2021

Sanjay Parasmal Chandaliya,
Age 54 yrs., Occ. Business,
R/o Jafar Gate, Bhikshu Complex,
Near Abhinay Theatres, Behind Vishal Traders,
Near Tar Bhavan, Aurangabad,
Tq. & Dist. Aurangabad.

... **Applicant**

... **Versus** ...

- 1 The State of Maharashtra,
Through CIDCO N-7 Police Station,
Aurangabad.
- 2 Vidya Pramod Babhulgaonkar,
Age 50 yrs., Occ. Service,
R/o Flat No.19, Anuyog Apartment,
Nandigram Colony, in front of Gajanan Temple,
Garkheda, Aurangabad.

... **Respondents**

...

Mr. A.S. Tilve, Advocate for the applicant
Mr. S.J. Salgare, APP for the respondent No.1
Mr. P.B. Patil, Advocate for the respondent No.2

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

DATE : 03rd AUGUST, 2022

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 By these applications the applicants are seeking quashment of the First Information Report vide Crime No.483/2021 registered with CIDCO N-7, Police Station, Aurangabad against them, for the offence punishable under Section 406, 420, 465, 468, 471 read with Section 34 of the Indian Penal Code, 1860; by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973.

3 It has been vehemently submitted on behalf of applicants that they have been falsely implicated. If the contents of the First Information Report are seen, then, it would clarify that original informant – present respondent No.2 was in need of some open plot to construct house and, therefore, she had made inquiry with Sanjay Parasmal Chandaliya – the applicant in Criminal Application No.2123 of 2021 and by posing himself as the Power of Attorney holder of one Ramsing Khemchand Harne, Pandit Khemchand Harne and Bandu Vitthal Harne stated that the said plot belonging to those persons is available for sale. After the talks, a registered sale deed was executed by said Sanjay Parasmal Chandaliya in favour of the

informant on 30.03.1998 for a consideration of Rs.15,000/-. Informant says that due to her financial condition she could not construct house, but her husband used to look after the plot. When she had visited the plot on 01.03.2020, she noticed that a tin shed has been constructed and when she made inquiry, the person who was available there was one Ankush Sukhdeo Mokale. He told that he has purchased it from one Shobhadevi Sohanraj Dhoka - applicant No.2 in Civil Application No.1822 of 2021 for a consideration of Rs.1,80,000/- by a Notary document dated 15.09.2014. When she contacted applicant No.2 Shobhadevi on phone it was informed to her that she has purchased it from Lalit Parasmal Chandaliya i.e. applicant No.1 in Criminal Application No.1822 of 2021. According to the informant, she collected the documents and came to know that, in fact, there were two Power of Attorneys; one was Sanjay and another was Lalit. According to the informant, Sanjay had created faith in her mind by showing that he is the only Power of Attorney and, therefore, she says that Sanjay, Lalit, Shobhadevi and Ankush have cheated them and thereby committed offence.

4 The learned Advocate for the applicants submitted that the transaction is totally civil in nature. If at all any right has been accrued to the informant, there was no talks between Lalit, Shobhadevi on one part with informant so as to give any kind of representation to her and they have not

created any false document. Lalit was having Power of Attorney and in view of his said character as Power of Attorney he has executed the sale deed. The learned Advocate appearing for Sanjay submits that when Sanjay had sold the land in 1998, thereafter he was not in picture at all. He has not misrepresented anybody. If anything has been done behind his back by Lalit, he cannot be responsible for the same. Both the learned Advocates for the respective applicants pray for quashment of the First Information Report.

5 Per contra, the learned Advocate for respondent No.2 submits that though by sale deed the ownership of the plot was transferred to the informant, it could not have been taken away or any document to that effect could not have been executed by Lalit or Shobhadevi. The informant is suffering. The documents, by which Shobhadevi as well as Ankush are showing their interest or right over the plot, are the notarized documents and not sale deeds which could not have transferred the title in them. Therefore, this is not a fit case where the powers under Section 482 of the Code of Criminal Procedure should be exercised.

6 Learned APP submits that the investigation is still pending and it would be revealed only after the completion of investigation as to what was the exact transaction and who is responsible for the same.

7 The facts are required to be considered as they have been pleaded in the First Information Report. As per the informant, she had purchased the plot by a registered sale deed dated 30.03.1998 from the Power of Attorney Sanjay Parasmal Chandaliya. In fact, not only on the basis of representation she should believe the seller but ought to have seen the Power of Attorney. She could have taken copy of that Power of Attorney with her. Upon inquiry, the learned Advocate appearing for the informant submits that no such document was given to the informant. Informant could have then even contacted the original owners, as to whether they had given Power of Attorney to Sanjay to sell the plot. If without precautions she had purchased the plot, then, for the consequences thereof she should alone be responsible. Now it is termed that Sanjay's brother Lalit was also holding the Power of Attorney. Another fact to be noted is that immediately after the sale the informant appears to have not acted as per its true owner. There appears to be no attempt on her part to get her name mutated to the said property. From 1998 till 01.03.2020 she had not done any positive act on the plot. But then according to her, when she saw the tin shed erected, she says that thereafter she started making inquiry. No doubt, the documents which have been produced, which were between Lalit and Shobhadevi as well as Shobhadevi with Ankush, are only the notarized documents and they have stated that they are the sale deeds. Even at this stage, it can be observed that

a notarized sale deed will not give title. Title to property can only be claimed on the basis of registered sale deed. But as regards those transactions are concerned, there was nothing between the informant on one part and Lalit and Shobhadevi on other part. None of the sections for the offence punishable under Sections 406, 420, 465, 468, 471 can be said to be attracted in view of the facts of the case. If a document is created which has no force in law nor it was used by anybody to claim title, then, to a third party, it cannot give any right. At the most, the transaction may give a civil remedy to the informant.

8 Under the above circumstance, it would be a futile exercise to ask them to face the trial and, therefore, this is a fit case within the parameters laid down in **State of Haryana and others vs. Ch. Bhajan Lal and others, AIR 1992 SC 604** to exercise powers under Section 482 of the Code of Criminal Procedure. Hence, the following order.

ORDER

1 Both applications stand allowed.

2 The First Information Report bearing Crime No.483/2021, dated 05.07.2021 registered with CIDCO N-7, Police Station, Aurangabad, Dist.

Aurangabad, for the offence punishable under Sections 406, 420, 465, 468, 471 read with Section 34 of the Indian Penal Code, 1860, is hereby quashed and set aside, to the extent of present applicants i.e. Lalit Parasmal Chandaliya (Jain) and Shobhadevi Sohanraj Dhoka (in Criminal Application No.1822 of 2021) and Sanjay Parasmal Chandaliya (in Criminal Application No.2123 of 2021).

3 Rule made absolute in above terms.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)

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