

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

CRIMINAL APPLICATION NO. 6405 OF 2017

1. Keshav S/o. Baburao Atkar,
Age: 44 years, Occu: Service as Teacher,
R/o: Dhait Nagar, Ambad,
Taluka Ambad, District Jalna.
2. Dilip S/o. Baburao Deshmukh,
Age: 54 years, Occu: Service as Teacher,
R/o: Gurukul Shikshak Colony, Ambad,
Taluka Ambad, District Jalna.
3. Ankush S/o. Bhanudas Pawar,
Age: 47 years, Occu: Service as Teacher,
R/o: Nutan Vasahat, Ambad,
Taluka Ambad, District Jalna.
4. Dadasaheb S/o. Bapurao Jangle,
Age: 38 years, Occu: Service as Teacher,
R/o: Gurukul Shikshak Colony, Ambad,
Taluka Ambad, District Jalna.
5. Anil S/o Maroti Mali,
Age: 38 years, Occu: Service as Teacher,
R/o: Gurukul Shikshak Colony, Ambad,
Taluka Ambad, District Jalna.
6. Ramesh S/o. Manoharrao Fatale,
Age: 53 years, Occu: Service as Teacher,
R/o: Gurukul Shikshak Colony, Ambad,
Taluka Ambad, District Jalna.
7. Narendra S/o. Narayan Ratnaparkhi,
Age: 46 years, Occu: Service as Teacher,
R/o: Gurukul Shikshak Colony, Ambad,
Taluka Ambad, District Jalna.
8. Arvind S/o. Uttamrao Dev,
Age: 51 years, Occu: Service as Teacher,
R/o: Behind Dattaji Bhale School,

Nutan Vasahat, Ambad,
Taluka Ambad, District Jalna.

9. Dhananjay S/o. Shivhar Mule,
Age: 39 years, Occu: Service as Teacher,
R/o: Sairaj Park Dhait Nagar, Ambad,
Taluka Ambad, District Jalna.
10. Rameshwar S/o. Nivrutti Kanke,
Age: 36 years, Occu: Service as Teacher,
R/o: Gurukul Shikshak Colony, Ambad,
Taluka Ambad, District Jalna.
11. Ramprasad S/o. Shriram Kolhe,
Age: 44 years, Occu: Service as Teacher,
R/o: Disha Nagari, Nutan Vasahat, Ambad,
Taluka Ambad, District Jalna.
12. Vaishali Subhash Waghmare,
Age: 45 years, Occu: Housewife,
R/o: Gurukul Shikshak Colony, Ambad,
Taluka Ambad, District Jalna.
13. Kamalkar S/o. Appasaheb Tonpe,
Age: 47 years, Occu: Service as Teacher,
R/o: Gurukul Shikshak Colony, Ambad,
Taluka Ambad, District Jalna.
14. Vasant S/o. Yashvant Wagh,
Age: 59 years, Occu: Retired,
R/o: Gurukul Shikshak Colony, Ambad,
Taluka Ambad, District Jalna.
15. Pralhadrao S/o. Bajirao Jadhav,
Age: 49 years, Occu: Service as Teacher,
R/o: Gunj (Bk),
Taluka Ghansavangi, District Jalna.
16. Umashankar S/o Eknath Vaghunde,
Age: 35 years, Occu: Business,
R/o: Near Police Colony, Nutan Vasahat,
Ambad, Taluka Ambad, District Jalna.

17. Parashwar S/o Sudam Shelke,
Age: 38 years, Occu: Service as Teacher,
R/o: Avinash Nagar, Behind Shivsai Temple,
Deolai, Beed bypass, Ambad,
Taluka Ambad, District Jalna.
18. Rameshwar S/o Gangadhar Kothekar,
Age: 49 years, Occu: Service as Teacher
At Matsyodari Vidyalaya, Ambad,
District Jalna,
R/o: Pachod Road, Ambad,
District Jalna.
19. Krishna S/o Vinayakrao Gophane,
Age: 62 years, Occu: Pensioner,
R/o: Teachers Colony, Pachod Road,
Ambad, District Jalna.
20. Shivaji S/o Murlidharrao Vaidya,
Age: 48 years, Occu: Service,
R/o: At/P Sast-Pimpalgaon,
Taluka Ambad, District Jalna.

... Applicants.

Versus

1. The State of Maharashtra,
Through the Investigation Officer,
Police Station, Ambad,
Taluka Ambad, District Jalna.
2. Asaram Rambhau Khole,
Age: 70 years, Occu: Agri.,
R/o: Om-Shanti Nagar, Taluka Ambad,
District Jalna.

... Respondents.

**WITH
CRIMINAL APPLICATION NO. 5550 OF 2017**

1. Vivek S/o Panditrao Patil,
Age: 43 years, Occ: Service,
R/o. Gurukul Sahakari Graha
Nirman Sanstah, Pachod Road,
Ambad, Taluka Ambad, District Jalna,

2. Dhananjay S/o Shivhar Mule,
Age: 39 years, Occ: Service as Teacher,
R/o. Sai-Raj Park, Dhait Nagar, Ambad,
Taluka Ambad, District Jalna.
3. Ramesh S/o Manoharrao Fatale,
Age: 53 years, Occ: Service as Teacher,
R/o. Plot No. 47, Shikshak Colony,
Ambad, Taluka Ambad, District Jalna.

... Applicants

Versus

1. The State of Maharashtra,
Through the Police Inspector,
Police Station, Ambad,
Taluka Ambad, District Jalna.
2. Asaram S/o Rambhau Khole,
Age: 65 years, Occu: Nil,
R/o. Om Shanti Nagar, Ambad,
Taluka Ambad, District Jalna.

... Respondents
(R.No.2-Complainant)

.....

Mr. Vaibhav U. Pawar, Advocate h/f Mr. S. S. Tope, Advocate for the Applicants in Criminal Application No. 6405 of 2017.

Mr. Shripad S. Kulkarni, Advocate for the Applicants in Criminal Application No. 5550 of 2017

Mr. S. D. Ghayal, APP for Respondent No.1-State in both Applications.

Mr. Chetan B. Choudhari, Advocate h/f Mr. Swapnil S. Patunkar, Advocate for Respondent No.2 in both Applications.

....

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 13.12.2022

JUDGMENT (ABHAY S. WAGHWASE, J.) :

1. All applicants in both criminal applications have sought the following prayers:

Prayers in Criminal Application No. 6405 of 2017

- A. This Hon'ble court may kindly allow this Criminal Application.
- B. The Hon'ble High Court may kindly quash and set aside the F.I.R. vide Crime No.0206/2017 registered on dated 19.07.2017 at police Station Ambad, Tq. Ambad, Dist. Jalna u/s. 463, 464, 465, 466, 467, 468, 470, 471, 420 r/w. 34 of Indian Penal Code.
- C. Pending hearing and final disposal of this Criminal Application, this Hon'ble Court may kindly grant stay to the proceeding of Crime No. 0206/2017 registered on dated 19.07.2017 at Police Station Ambad, Tq. Ambad, Dist. Jalna u/s. 463, 464, 465, 466, 467, 468, 470, 471, 420 r/w. 34 of Indian Penal Code.
- D. Pending hearing and final disposal of this Criminal Application, this Hon'ble Court may kindly direct the respondent No.1 for not to file Charge-Sheet in Crime No. 0206/2017 registered on dated 19.07.2017 at Police Station Ambad, Tq. Ambad, Dist. Jalna u/s. 463, 464, 465, 466, 467, 468, 470, 471, 420 r/w. 34 of Indian Penal Code.
- E. Ad-interim relief in terms of prayer clause "C" and "D" may kindly be granted;
- F. Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the peculiar facts and circumstances of the case.

Prayers in Criminal Application No. 5550 of 2017

- A. This Criminal Application may kindly be allowed.
- B. The F.I.R. bearing Crime No.0206/2017 registered with Police Station, Ambad, Tq. Ambad, Dist. Jalna dated 19.07.2017 for the offences punishable U/sec. 420, 463, 464, 465, 466, 467, 468, 470, 471 r/w 34 of I.P.C. filed by respondent No.2, may kindly be quashed to the extent of present applicants.
- C. During the pendency of this application, further the proceeding/investigation in respect of the F.I.R. bearing Crime No.0206/2017 registered with Police Station, Ambad, Tq. Ambad, Dist. Jalna dated 19.07.2017 for the offences punishable U/sec. 420, 463, 464, 465, 466, 467, 468, 470, 471 r/w 34 of I.P.C. filed by respondent No.2 to the extent of present applicants may kindly be stayed.
- D. Ad-interim relief in terms of prayer clause “C” may kindly be granted in favour of the applicants.
- E. Any other suitable and equitable relief may kindly be granted in favour of the applicants.

2. One Asaram Rambhau Khole approached the court of learned Judicial Magistrate, First Class, Ambad by filing Criminal M.A. No. 227 of 2017 praying to invoke powers under Section 156(3) of the Code of Criminal Procedure (for short, “Cr.P.C.”) to register crime for the offences punishable under Sections 463, 464, 465, 466, 467, 468, 470, 471, 420 r/w. 34 of the Indian Penal Code (for short, “IPC”) against almost 80 persons. The applicant therein i.e. (present respondent no.2) alleged that out of land survey no.1 ad-
6/15

measuring 8 Hectare 36 Are, 2 Hectare 4 Are land is declared as protected tenancy land way back in 1976. Grandfather of applicant-respondent no.2, namely, Rangnath Khole was the beneficiary of the land as a tenant and there is record to that extent. It is alleged that after demise of Rangnath, name of his wife Saibai was entered in the record. Taking disadvantage of her old age and illiteracy, accused nos. 1 to 3, by committing fraud and manufacturing false documents, got sale deed executed and thereby cheated her as well as Government. That in fact it was a joint family property and there were various stake holders, including the applicant-respondent no.2. It is alleged that in spite of being a protected tenancy land, no necessary permission from the Government authorities was obtained and on the strength of false, forged documents, sale deeds were got executed and accused nos. 1 to 3 by conniving with each other and made plotting over the said land and therefore, legal action was sought against them.

Learned J.M.F.C., Ambad, after following due procedure, thought it a fit case to direct investigation at the hands of police and thereby invoked Section 156(3) of Cr.PC. On the backdrop of such order, Ambad Police Station registered crime bearing no.206 of 2017 for above offences. Including applicants, 81 persons were arraigned as accused. Precisely said FIR is questioned and sought to be quashed and set aside by exercise of powers under Section 482 of Cr.PC.

SUBMISSIONS

3. In favour of relief, learned Advocates for the applicants in both the applications appraised us about the background of applicants herein and about they to be working as teachers in a private school. It is submitted that one Fatema Sharifa Habib Ahmed was the original owner of land survey no.1 ad-measuring 20 Acres 28 Are. Said Fatema executed registered sale deed dated 15.03.1977 in favour of Saibai i.e. grandmother of informant. That said sale transaction was registered one. That after thorough inquiry, it was revealed that the land was not falling under any tenancy and informant was not heir of any protected tenant. Our attention is invited to the sale deed. It is further pointed out that subsequently, Saibai also entered into transaction with one Ankushrao Ambadasrao Ubale i.e. on 04.06.1985 and said transaction was also registered wherein vendor Saibai has specifically mentioned that the land is free from all encumbrances and also free from ceiling and tenancy. Taking a pause here, learned counsel would submit that therefore, from the documents it is clear that land was not a tenancy land and therefore, allegations levelled in the FIR are apparently false. He pointed out that subsequently, Ankushrao Ubale also sold the land to Subhash Vikramrao Chate vide registered sale deed dated 15.04.1999. Said Subhash Chate subsequently formed a cooperative housing society by following due procedure and after getting it registered, permission was obtained from the Collector, Jalna for conversion of land into non agricultural land. It is pointed out that said authority also, after following

due procedure, sanctioned and granted N.A. permission. Documents to that extent are on record. Learned counsel pointed out that thereafter, plots were drawn and after taking search title through an Advocate, housing loan was applied and nationalized bank had, after thorough enquiry, granted the same and thereafter, houses were raised. Thus, it is submitted that, all documents of the legal procedure adopted by the applicants is a part of record. The FIR is apparently with ulterior motive and with false allegations. He emphasizes that there is no document from respondent no.2's side showing that said land is protected tenancy land. On the contrary, detail inquiry revealed that there was valid sale transaction. Therefore, FIR itself being with full of false allegations and being filed with oblique motive, maintainability of the FIR and continuation of proceedings in consequence of it would amount to abuse of process of law. Therefore he urged and persuaded us to grant relief prayed herein.

4. On behalf of the State, learned APP pointed out that learned Magistrate has directed investigation by exercise of powers under Section 156(3) of Cr.P.C. The informant claims that land was protected tenancy land. Requisite permission was necessary before entering into any sale transaction which seems to have not been done. According to the informant, taking disadvantage of old age of vendor Saibai, accused persons have, on the strength of false and forged documents, entered into the sale transaction with her and thereby have

committed above offence. Investigation also revealed involvement of applicants and as such, it is his submission that, it is not a fit case for exercise of powers under Section 482 of Cr.P.C. and to further quash the same.

5. Learned counsel for respondent no.2 also argued on the same lines while opposing the application and relief and he would submit that present applicants' complicity is brought on record by the Investigating Officer. Serious offence of forgery and cheating has been committed and fraud has been played not only on the informant, but even on the Government by manufacturing bogus documents. Therefore, for said act, applicants must face legal action. He too prayed for dismissal of the application.

6. We have heard both sides at length. With the assistance of learned counsel for the applicants as well as the other side, we have also visited the complaint and documentary evidence which is made part of present proceedings.

On going through the available material, sum and substance of case of respondent no.2 is that the landed property alleged to be purchased by applicants herein was a tenancy land. The respondent no.2 has claimed that his grandfather was beneficiary and subsequent to demise of his grandfather, about his grandmother Saibai to be the successor and tenancy land being transferred in her favour. Allegations are levelled that taking disadvantage of

her old age and illiteracy, the sale transaction had been entered with her, more particularly on the strength of forged and fabricated documents, and thereby offence has been committed.

7. In the light of above submissions, we have put the documents placed before us to minute scrutiny. Our attention is specifically invited to the sale transaction between Saibai and one Ankushrao Ambadasrao Ubale i.e. sale deed dated 04.06.1985. Such document at Exhibit “C” shows, as pointed out to us, that the vendor Saibai had agreed by way of recital that, the land is free from all encumbrances and also free from ceiling and tenancy. It appears that Ankushrao Ubale further entered into a sale transaction of the said writ land with Subhash Vikramrao Chate on 15.04.1999 vide registered sale deed bearing no. 5235 of 1999. Said Subhash Chate formed Gurukul Co-operative Housing Society by seeking N.A. permission as required under the Maharashtra Land Revenue Code and document Exhibit “E” goes to show that the Collector office granted N.A. permission. Thereafter, said Subhash Chate undertook the process of seeking sanction of layout and the same also seems to be issued in his favour. The document Exhibit “F” is evident on that point.

8. Applicants have also placed on record search title obtained by them by engaging an Advocate and documents about loan applied and being raised from the nationalized bank for construction of houses. Permission of local

body i.e. Municipal Council issued in favour of applicants is also part of the annexures i.e. vide Exhibit “G”.

9. Taking into consideration the above discussed documentary material on record, it is apparent that by virtue of sale instances, which were in fact registered one, applicants herein have become owners and possessors of their respective plots and they have raised houses respectively for them. It is further evident that at no point of time earlier, i.e. at the time of alleged transaction between Saibai and Ankushrao Ubale, any objection was raised by the informant herein. The proceedings before learned J.M.F.C. for exercise of power under Section 156(3) of Cr.P.C. seems to have been undertaken by filing Criminal M.A. directly in the year 2017. Moreover, neither in the Criminal M.A. nor before learned J.M.F.C., Ambad, any documentary material appears to have been placed on record to demonstrate that land in question was a tenancy land. When there are specific allegations of fraud being played, then it was the responsibility of the complainant to demonstrate so. But, this seems to have not been done.

10. This Court is in receipt of report under the signature of Police Inspector, Police Station Ambad, who, after thorough investigation, has placed on record the report. We have carefully examined the same. It is stated in the report that investigation was undertaken upon registration of crime in view of order of

the court of JMFC, Ambad. Report states that it was revealed that episode is of civil nature. That it pertains to alleged land i.e. land ad-measuring 5 Acres 12 Are. Investigating officer claims that statements of accused Ankushrao Ambadasrao Ubale and Subhash Vikram Chate were recorded and detail inquiry was made with them. Inquiry revealed that one Saibai (grandmother of complainant), entered into said transaction with proposed accused Ankushrao Ubale vide registered sale deed dated 04.06.1985 and subsequently, Ankushrao Ubale sold the land to Subhash Chate, who was Chairman of Gurukul Shikshak Grihnirman Society on 15.04.1999 and said sale transaction was also registered one. Said Shubhash Chate applied for conversion of land to N.A. and subsequently, on receipt of permission from Collectorate Jalna, plotting and layout was made. Report also indicates that thereafter permission of construction of houses was applied for and sought from Municipal Council, Ambad. Report also speaks about some civil proceedings pending in the court of law bearing Civil Suit No. 232 of 2011 and Civil Suit No. 326 of 2011, and the same came to be later on withdrawn by virtue of compromise. The Investigating Officer claims that investigation did not reveal about any of the sale deeds to be bogus and fabricated. That there was no tenant over the land sold by Saibai to Ankushrao Ubale. Resultantly, it is concluded that there is no cogent evidence about commission of offence under alleged sections and therefore, police authority prepared "A" Final Summary bearing no. 110 of 2020 and it was duly submitted to the

Court.

11. On taking audit of entire documentary material on record, including registered sale instances and report of Investigating Officer, and on giving anxious thought to the submissions advanced by each side in favour of their respective cases, we are convinced that here there is nothing on record to accept the submissions of respondent no.2-informant about firstly, land to be a tenancy land and about creation and fabrication of bogus documents. Apparently, documents placed on record go to show that after entering into valid registered sale transaction, revenue authority i.e. Collectorate office and Tahsil office are approached for N.A. permission. On receipt of the same, lay out was drawn and plotting was done by the cooperative housing society formed by proposed accused who are said to be teachers by occupation and they have applied for housing loan. Advocate's search title report was also obtained and thereafter, bank has approved housing loan. Taking into account such quality of documents, there does not seem to be any force in the allegation about land to be tenancy land and that without permission from competent authority, sale instances are carried out thereby defrauding both, complainant as well as Government. There is apparently blend/texture of civil dispute.

Therefore, with such nature of complaint, launching prosecution on applicants-proposed accused would definitely amount to abuse of process of law. Finding it a fit case for intervening and to exercise inherent powers bestowed upon this Court under Section 482 of Cr.PC., we proceed to allow the application and hence the following order :

ORDER

- I. Both the applications, to the extent of applicants therein, are allowed in terms of respective prayer clause [B].
- II. The applications are accordingly disposed off

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

VRE