

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

**CRIMINAL APPLICATION (APL) NO. 87 OF 2022**

1 Namdeo S/o. Bhaiyyaji Nagpure, **APPLICANTS**  
 Aged : 54 years, Occupation :-  
 Agriculturist

2 Yuvraj S/o Bhaiyyaji Nagpure,  
 Age : 45 Years, Occupation :- Agriculturist  
 Both R/o Ringanabodi, P.O. Shiva  
 (Savanga), Tah. Katol, Ringanabodi,  
 Nagpur, Maharashtra – 440 023

3 Sunanda W/o Shridhar Raut,  
 Age : 48 Years, Occupation :- Household  
 R/o Raut Pura, Kondhali, Tah. Katol,  
 Kondhali, Maharashtra – 44110

4 Chandrakala W/o. Ganesh Bhoyar,  
 Age :- 40 Years, Occupation :- Household  
 R/o Nildoh, Tah. Hingna, Dist. Nagpur

**VERSUS**

1 State of Maharashtra, Through Police :  
 Station Officer, Police Station Hudkeshkar,  
 Nagpur, Maharashtra - 440034

2 Dr. Rekha Baburao Shambharkar,  
 Age 61 Years, Occupation – Medical  
 Practitioner, R/o Plot No. 2, Mahalaxmi  
 Nagar, Manewada Road, Nagpur.

**NON-APPLICANTS**

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**RESPONDENTS**

Mr. R.R. Vyas, Advocate for Applicants

Mr. S.M. Ukey, A.P.P. for Respondent No.1

Mr. Y.B. Mandpe, Advocate for Respondent No.2

**CORAM : MANISH PITALE AND**  
**G.A. SANAP, J.J.**

**DATE : 19<sup>th</sup> AUGUST 2022**

**ORAL JUDGMENT (PER : Manish Pitale, J.)**

Heard.

2. **ADMIT**. Heard finally by consent of the learned counsel appearing for the parties.

3. By this application, the applicants are seeking quashing of First Information Report (FIR) No. 886/2021, dated 13/12/2021, registered at Police Station Hudkeshwar, Nagpur for offence under Section 406 read with Section 34 of the Indian Penal Code (IPC).

4. The FIR stood registered on the basis of an oral report submitted on 13/12/2021, by the non-applicant No.2.

5. The grievance of the non-applicant No.2 was that the applicants herein had with common intention acted in such a manner that the aforesaid criminal offence stood committed on their part. It was alleged that father of the applicants had entered into an agreement on 20/10/2007, with the non-applicant No.2, in respect of sale of an agricultural field for total consideration of Rs.41,27,000/-. It was alleged that amounts were paid in cash and by other means from time to time to the extent of Rs.10,31,890/-. It was alleged that in terms of the agreement executed between the father of the applicants and the non-applicant No.2, a document called "Ka Prat" was supposed to be

produced by the father of the applicant i.e. vendor, for the completion of the transaction. It is specifically alleged by the non-applicant No.2 that the applicants were signatories as consenting parties to the said document (agreement) dated 20/10/2007 and that they were well aware about the transaction. It is further alleged that behind the back of the non-applicant No.2 on 17/01/2012, the father of the applicants executed a registered sale deed in favour of applicant Nos.1 and 2. Subsequently, on 29/05/2021, the father of the applicants died. It is claimed that thereafter, the non-applicant No.2 became aware about the aforesaid sale deed and thereupon, he lodged the oral report resulting in registration of the FIR.

6. Mr. Vyas, learned counsel appearing for the applicants submitted that there was no dispute about the fact that the applicants were consenting parties to the agreement executed, as far back as on 20/10/2007. Merely because the applicants were signatories as consenting parties to the said document, it could not be made the basis for fastening criminal liability upon them. It was submitted that the nature of dispute sought to be raised by the non-applicant No.2 was purely of civil nature and it was sought to be given a colour of criminality, only as an arm-twisting tactic. It was submitted that if at all the non-applicant No.2 had grievance it could perhaps be against father

of the applicants, who had admittedly died in the meanwhile. It was submitted that non-applicant no.2 could have instituted appropriate proceedings on the civil side and instead of doing so, the aforesaid FIR was lodged, only with a view to pressurize the applicants into refunding money that the non-applicant No.2 claims to have paid.

7. On the other hand, Mr. Mandpe, learned counsel appearing for the non-applicant No.2 submitted that the contents of the oral report clearly disclosed cognizable offences. Although offence under Section 406 of the IPC has been registered, the contents of the oral report appear to disclose offence under Section 420 of the IPC, as the applicants had cheated the non-applicant No.2. It was submitted that being consenting parties to the agreement they ought to have issued a notice to the non-applicant No.2 before entering into the transaction of sale dated 17/01/2012. It was further submitted that ingredients of the said criminal offence were clearly made out on the basis of the oral report submitted before the police. Therefore, the FIR was registered. It was submitted that the non-applicant No.2 had parted with the huge amount of Rs.10,31,890/- and, therefore, the matter deserved to go to trial.

8. We have heard the learned counsel for the rival parties in the

backdrop of the material placed on record. The crucial question that arises for consideration is, whether the applicants are justified in claiming that the nature of dispute sought to be raised by the non-applicant is purely of a civil nature and that colour of criminality is sought to be added, only as a pressure tactic on the applicants.

9. We are of the opinion that a given set of circumstances can give rise to both civil and criminal proceedings. Such matters have been dealt with by the Hon'ble Supreme Court and this Court on numerous occasions and a distinction is sought to be raised between a genuine grievance giving rise to civil and criminal proceedings and cases where colour of criminal liability is sought to be given to a purely civil dispute. The learned counsel appearing for the applicants is justified in relying upon judgment of the Hon'ble Supreme Court in the case of **Indian Oil Corpn. Vs. NEPC India Ltd. and others** reported in (2006) 6 SCC 736, wherein it has been held, in this context, as follows :

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil

disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri vs. State of UP* [2000 (2) SCC 636], this Court observed : (SCC p. 643, para 8)

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under [Section 482](#) of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

10. Applying the said position of law to the facts of the present case, we find that the grievance of non-applicant No.2 being essentially civil nature is being sought to be given a cloak of criminality. We find that in the present case an agreement was executed between the father of the applicants and non-applicant No.2, as far back as on 20/10/2007. In the oral report itself it is claimed that amounts towards part consideration were paid by the non-applicant No.2 to the father of the applicants from time to time, amounting to Rs.10,31,890/-. The non-applicant No.2 claims that the transaction did not materialize into a sale deed, only because the aforesaid document called "Ka Prat" was not supplied by the father of the applicants. If that was the grievance of the non-applicant No.2 throughout the pendency of the transaction, we fail to

understand what prevented the non-applicant No.2 to raise grievance in that regard, during the life time of the father of the applicants.

11. It is an admitted position that father of the applicants expired on 29/05/2021. It appears that only after the death of the father of the applicants, who had entered into the agreement with non-applicant No.2, that he has chosen to raise a grievance. The trigger point according to the non-applicants, for criminal liability in the present case was execution of the sale deed on 17/01/2012, by the father of the applicants in favour of the non-applicant Nos.1 & 2.

12. But, when the non-applicant No.2 is insisting upon criminal liability in the context of offences under Sections 406 and 420 of IPC, what is crucial is that the accused persons ought to be at least prima facie to be shown as having the intention to commit such offences from the very beginning of the transaction. We find it difficult to accept that by signing as consenting parties, as far back as on 20/12/2007, the applicants had harbored the intention of committing the said offences against the non-applicant No.2. There is substance in the contention raised on behalf of the applicant that, if at all, the non-applicant No.2 could have had a grievance against the father of the applicants during his life time.

13. We have no doubt about the fact that there is indeed a grievance that the non-applicant No.2 has, but, we are of the opinion that the grievance is purely of a civil nature, which can be taken care of in appropriate proceedings that can be instituted by the non-applicant No.2, in accordance with law.

14. We are clear, on the basis of material available on record, that by no stretch of imagination, can the cloak of criminality be given to the grievance sought to be raised by the non-applicant No.2s before this Court.

15. In view of the above, application is allowed in terms of prayer clause – 2, which reads as follows :

“(ii) Upon perusal of same, quash and set aside, First Information Report No.886/2021 dated 13/12/2021, registered with non-applicant Hudkeshwar Police Station, Dist. Nagpur, for commission of offences punishable u/s 406, 34 of Indian Penal Code, on such terms and conditions, in the interest of justice.”

(G.A. SANAP, J.)

(MANISH PITALE, J.)

*MP Deshpande*