

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO.461 OF 2021

APPLICANTS

(Ori. Accd. Nos.4 & 5)

: 1. Umesh Rambhau Mhaturkar, Aged
45 years, Occ. Agriculturist.

2. Sau. Lata Umesh Mhaturkar, Aged 35
years, Occ. - House Work and
Agriculturist.

Both R/o. Takli Khurd, Tq. Akot,
Dist. Akola.

//VERSUS//

NON-APPLICANTS

: 1. State of Maharashtra, through Police
Station Officer, Police Station
Dahihanda, Dist. Akola.

2. Amit Kishor Goyanka, Aged 44 years,
Occ. - Agriculturist, R/o. Alshi Plot,
Akola, Tq. & Dist. Akola.

Mr. V.B. Bhise, Advocate for the Applicants.
Mr. A.S. Fulzele, Addl. P.P. for Non-applicant No.1.
Mr. R.V. Malviya, Advocate for Non-applicant No.2.

CORAM : **MANISH PITALE AND**
 VALMIKI SA MENEZES, JJ.

DATE : **24th AUGUST, 2022.**

ORAL JUDGMENT (Per: Manish Pitale, J.)

Heard finally with the consent of the learned counsel appearing for the parties. **Admit.**

02] By this application, the applicants are seeking quashing of First Information Report bearing No.36/2021 dated 23.01.2021, registered at Police Station Dahihanda, District Akola, for offences under Sections 420, 466, 467, 471 read with Section 34 of the Indian Penal code. The applicants submit that insofar as they are concerned, the FIR is not tenable at all and continuation of criminal proceedings as against him would amount to an abuse of the process of law.

03] Mr. Bhise, learned counsel appearing for the applicants has invited attention of this Court to the documents placed on record with the present application. It is brought to our notice that the applicant No.1 purchased the suit property from one Kisan Tade by registered sale-deed dated 20.04.2018. It is submitted that the name of the said vendor was very much recorded in the record of rights and the mutation entries being in

the name of his vendor, the applicant No.1 had no reason to suspect anything in the matter.

04] It appears that the non-applicant No.2 initiated a proceeding before the Sub-Divisional Officer under the provisions of the Maharashtra Land Revenue Code, 1966, challenging the mutation entry bearing No.713 in favour of the vendor of the applicants before this Court. Admittedly, the applicants were not made parties to the said proceedings. There were certain allegations levelled by the non-applicant No.2 against the vendor of the applicant and by order dated 23.11.2020, the Sub-Divisional Officer allowed the application filed by the non-applicant No.2, thereby holding in his favour and directing that the mutation entry bearing No.713 be cancelled.

05] In the meantime, on the strength of the registered sale-deed, the name of the applicant No.1 was initially entered in the revenue records and subsequently since he gifted the property to his wife i.e. applicant No.2, the mutation entry stood in the name of applicant No.2.

06] Upon becoming aware about the order dated

23.11.2020, passed by the Sub-Divisional Officer, the applicant No.2 challenged the said order before the Collector, which met with failure and we are informed that further the applicant No.2 has challenged the order of the Collector and the Sub-Divisional Officer before the Commissioner, which challenge is pending before the said Authority.

07] We are also informed that the applicants have filed a suit for injunction against the non-applicant No.2, pertaining to the said property, wherein an order of temporary injunction, protecting their possession, is operating in their favour.

08] The learned counsel for the applicants submits that in this backdrop, when the oral report leading to registration of the FIR is perused, the only reference to the applicants is that the applicant No.1 purchased the property from the original vendor and subsequently gifted it to his own wife i.e. applicant No.2. Thereafter, a general allegation is made against all the accused persons about cheating and other offences. It is relevant that in the meantime, the original vendor Kisan Tade expired and in the FIR, the legal representatives of Kisan Tade are made accused,

along with the applicants and the Talathi, as also the Circle Officer. According to the learned counsel for the applicants, no criminality can be attributed to the applicants on the face of the record and therefore, the FIR deserves to be quashed, insofar as they are concerned.

09] Mr. Fulzele, learned Additional Public Prosecutor, appeared on behalf of non-applicant No.1/State and submitted that the investigation was under progress and the names of the applicants were indeed stated in the oral report leading to the registration of the FIR.

10] Mr. R.V. Malviya, learned counsel has appeared on behalf of non-applicant No.2 and he supported the contents of the oral report, leading to registration of the FIR. It was submitted that since the applicants were beneficiaries of the sale-deed executed by the original vendor, it was necessary to investigate the role of the applicants to unearth the conspiracy.

11] We have perused the oral report, leading to registration of the FIR and we have appreciated the factual backdrop in which the oral report was submitted.

12] It is undisputed that the applicant No.1 purchased the property in question from the original vendor at the time when the name of the original vendor was recorded in the record of rights at mutation entry No.713. As a cautious purchaser, the applicant No.1 could only have verified the revenue records in order to go ahead with the transaction. There is a registered sale-deed executed in favour of the applicant No.1, on the strength of which, he executed the gift deed, as a consequence of which, the name of applicant No.2 was recorded in the record of rights.

13] It is significant that when the non-applicant No.2 approached the Sub-Divisional officer, challenging the mutation entry, only the mutation entry No.713, pertaining to the original vendor was made subject-matter of challenge and admittedly, the applicants were not made parties to the said proceedings. Thereafter, the applicant No.2 proceeded to challenge the order, passed by the Sub-Divisional Officer, as per proceedings known to law and at present, the challenge is pending before the Commissioner under the provisions of the aforesaid Code. There is also no dispute about the fact that an order of temporary

injunction is operating in favour of the applicants in the pending suit.

14] We are of the opinion that in this backdrop, it would be too far-fetched to attribute any criminality on the part of the applicants, even if the entire oral report depicting the grievance of the non-applicant No.2, is taken into consideration. We make no comment about the role of the legal representatives of the original vendor, the Talathi and the Circle Officer, but we are convinced that the applicants before this Court cannot be foisted with criminal liability only because the applicant No.1 purchased the property by way of a registered document and thereafter, executed gift deed in favour of his own wife i.e. applicant No.2.

15] We are convinced that allowing the proceedings to continue against the applicants, would amount to abuse of process of law, the proceedings being vexatious and ends of justice would be met, if the FIR is quashed, insofar as the applicants are concerned.

16] In view of the above, the application is **allowed** in terms of prayer Clause (1), which reads as follows:

1) quash and set aside FIR registered by non-applicant no.1 bearing No.0036/2021 dated 23.01.2021 registered by Police Station, Dahihanda, Tq and Dist. Akola for an offence punishable under Section 420, 466, 467 R/w. 34 of IPC.

17] It is made clear that the said FIR stands quashed only insofar as the applicants before this Court are concerned.

(VALMIKI SA MENEZES)

(MANISH PITALE, J.)

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