

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

CRIMINAL APPLICATION (APL) NO. 491/2017
WITH
CRIMINAL APPLICATION (APL) NO. 382/2017

CRIMINAL APPLICATION (APL) NO. 491/2017

1. Pramod S/o. Vithobaji Tarvekar,
aged about 55 years, Occ. Agriculturist
& Business, R/o. Ward No.1, Gowardhan
Square, Nagbhid, Tah. Nagbhid,
Dist. Chandrapur.
2. Ganesh S/o. Jairam Tarvekar,
aged about 37 years, Occ. Agriculturist
& Service, R/o. Ward No.1, Gowardhan
Square, Nagbhid, Tah. Nagbhid,
Dist. Chandrapur.
3. Pravin S/o. Gajanan Burle,
aged about 42 years, Occ. Agriculturist
& Service, R/o. Shesh Nagar,
Bramhapuri, Dist. Chandrapur.

... **APPLICANTS**

VERSUS

The State of Maharashtra,
through P.S.O. of Police Station
Brahmapuri, Dist. Chandrapur.

...**NON-APPLICANT**

Mr. E. W. Nawab, Advocate for applicants.
Mr. H. D. Dubey, Additional Public Prosecutor for non-
applicant/State.

WITH**CRIMINAL APPLICATION (APL) NO. 382/2017**

Sagar S/o Kishansingh Chandrawanshi,
 aged about 50 years, Occ. Retired,
 R/o.Adarsh Colony, Gourakshan Road,
 Akola, Tah. & Dist. Akola.

... **APPLICANT**

VERSUS

The State of Maharashtra,
 through its Police Station Officer,
 Bramhapuri, Dist. Chandrapur.

...**NON-APPLICANT**

Mr. Anil Mardikar, Sr. Advocate assisted by Mr. S. G. Joshi,
 Advocate for applicant.

Mr. H. D. Dubey, Additional Public Prosecutor for
 non-applicant/State.

CORAM : **VINAY JOSHI, J.**

DATE OF JUDGMENT : **26.08.2022.**

JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties.
3. These two applications in terms of Section 482 of the Code of Criminal Procedure ('Code') though arises out of two separate orders

passed by the learned Sessions Judge, however, the contention and the subject matter is one and the same therefore, they are taken together for hearing and final disposal.

4. Criminal Application (APL) No. 491/2017 has been filed by the accused No. 4 (Pramod Tarvekar), accused No. 5 (Ganesh Tarvekar) and accused No. 7 (Pravin Burle) of regular criminal case No. 73/2010 whilst Criminal Application (APL) No. 382/2017 has been filed by accused No. 6 Sagar Chandrawanshi. Both set of accused have filed discharge applications which came to be rejected by the Trial Court against which two separate criminal revisions bearing Criminal Revision Application Nos. 78/2011 and 79/2011 were filed. Both revisions were dismissed on the same day by separate orders which are under challenge.

5. A crime was registered vide Crime No. 81/2010 with the Police Station Bramhapuri, District Chandrapur for the offence punishable under Sections 406, 468 471, 420 read with section 34 of the Indian Penal Code initial against three accused (not applied for discharge). However, charge-sheet has been filed against in all seven accused. The applicants have not been named in the First Information Report (FIR). It is the prosecution case that accused No. 1 Sureshsingh Gaur, accused No. 2 Anandrao and accused No. 3 Deelip have induced

the Police employees to invest the amount in proposed housing society on the promise of allotment of plots. In accordance with that, near about 22 Police persons have invested the amount for which receipts have been issued. However, instead of allotting plots to the investors, the land was sold to existing applicants. It is alleged that the present applicants in collusion with main accused Nos. 1 to 3, have cheated the investors as well as prepared false and fabricated documents of sale. It is stated that the less consideration is shown as well as on the basis of fabricated documents, loan has been obtained by the present applicants.

6. It reveals that a piece of land admeasuring 0.80 R. out of survey No. 60/2, situated at village Delanwadi, Tahsil Bramhapuri, District Chandrapur was purchased in the individual name of accused No. 2 Anandrao and accused No. 3 Deelip vide sale deed dated 29.03.1997. Latter on, accused Nos. 2 and 3 have sold a piece of land admeasuring 0.20 R. out of the said land to accused No. 6 Sagar vide registered sale-deed dated 30.06.1997. Latter of said land admearuing 0.20 R. has been resold by the accused No. 6 Sagar in favour of accused No. 4 Pramod and accused No. 5 Ganesh vide registered sale-deed dated 05.12.2005. Likewise accused Nos. 2 and 3 under registered sale-deed dated 21.12.2006, sold 0.25 R. land out of said land in favour

of accused No. 4 Pramod. Similarly, accused Nos. 2 and 3 have also sold remaining 0.35 R. land in favour of accused No. 5 Ganesh and accused No. 7 Pravin under registered sale-deed dated 20.12.2006.

7. Perusal of entire police paper indicates that the main grievance is that the accused Nos. 1 to 3 have promised informant and other witnesses that they would purchase a piece of land for housing society, however the land was purchased in their individual names. It is alleged that the sale consideration was shown differently by accused Nos. 2 and 3 and thus, cheated the members of proposed society. It is alleged that despite the land purchased from the funds raised from the society's members, accused Nos. 2 and 3 have sold said land to the present applicants for huge consideration. Moreover, it is alleged that the present applicants in connivance with main accused i.e. accused Nos. 1 to 3 have entered into said transactions for the purpose of cheating and thus created false and fabricated documents.

8. Notably First Information Report ('FIR') was lodged against accused Nos. 1 to 3 but they have not applied for discharge. The main allegation against accused Nos. 1 to 3 is of collecting huge funds under guise of forming housing society and allotment of plots. So far as the present applicants are concerned, it is alleged that they have conspired with main accused and purchased the land which was purchased from

the subscription collected from members. The allegation is about conspiracy hatched by applicants along with main accused. However, besides mere allegation of conspiracy, there is nothing against the present applicants. It is brought to the notice that though the applicants have purchased smaller piece of land under different sale-deeds, however, it was a bona fide transaction since the land stood in the individual name of accused Nos. 2 and 3. The applicants have produced a revenue extract to show that the land was individually purchased by the accused Nos. 2 and 3. As per revenue record as well as title documents, it was individual land which was sold to the applicants.

9. Both Courts below have not considered that as per record, both transactions were individual and thus, unless there is any material to prima facie show the collusion, the transaction ipso facto will not work against applicants. The learned APP is unable to point out any material so that the reasonable inference can be drawn that the applicants have conspired with the main accused and the respective purchase are a part of conspiracy. Undoubtedly, at the time of discharge, the Court is empowered to sift the material to the limited extend to find out whether a case to proceed further has been made out. The police paper does not disclose any material to show that the

transaction entered by the applicants was mala fide and result of conspiracy. On the other hand, the documents prima facie indicate that it was a bona fide individual sale transaction. The prosecution is equally unable to point out a prima facie case to constitute the offence of forgery and cheating. The learned APP is unable to satisfy as to how the case of preparation of forged documents is made out. The registered sale-deeds executed by the individual cannot be termed to be forged document on mere allegation that those transactions were not genuine.

10. The criminal trial is serious affair and therefore, unless there exists prima facie material to show conspiracy, criminal case shall not be allowed to continue. The police paper does not make out even a prima facie case to raise a strong suspicion against the applicants. Continuation of such prosecution would be abuse of the process of Court and the exercise in futility. The applicants have made out a case for discharge. In view of that, the orders passed by both the Courts below are hereby quashed and set aside. The applicants namely accused No. 4 Pramod Tarvekar, accused No. 5 Ganesh Tarvekar, accused No. 6 Sagar Chandrawanshi and accused No. 7 Pravin Burle stand discharged in Regular Criminal Case No. 73/2010.

11. In view of above, both the criminal applications are allowed and disposed of accordingly.

(VINAY JOSHI, J.)

Gohane

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signed by
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