

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

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CRIMINAL APPLICATION (APL) NO. 926/2019

Pradeep s/o Druv Sontakke
Aged 38 years, occu: medical officer
R/o Rallies Plot, Khamgaon
Tah.Khamgaon Dist. Buldana. ..Applicant

versus

1) State of Maharashtra
Through PSO Khamgaon
Dist. Buldana.

2) Vijaysingh Namdevsingh Rajput
R/o Plot No. 7, Aarti Apartments
Near Talathi Office, Kulgaon
Badlapur-421503,, Dist. Thane.
Through his power of attorney holder
Vikas @ Vikassingh Namdevsingh Rajput
Aged about 65 years, occu: retired
R/o Agrawal Colony
Near Municipal School No.9
Khamgaon, Tq. Khamgaon
Dist. Buldana. ..Respondents

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Mr. S.V. Sirpurkar, Advocate for the Applicant
Mr. M.K. Pathan, APP for the Respondent 1
Mr. H.R.Gadhia, Advocate for Respondent 2

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CORAM : ROHIT B. DEO &
ANIL L. PANSARE, JJ
DATED : 14th September, 2022.

ORAL JUDGMENT: (Per: ANIL L.PANSARE, J.)

Admit. Heard finally.

2. The applicant is seeking quashment of the charge-sheet dated 17th April, 2020 bearing Charge-sheet No. 43/2020 registered by Police Station, Khamgaon, Dist Buldana for the offence punishable under sections 420, 464, 468, 471 read with Section 34 of the Indian Penal Code.

3. The First Information Report dated 15th May, 2019 would reveal the following facts :-

One Vijaysingh Namdevsingh Rajput has executed a power of attorney in favour of the informant Vikassingh Namdevsingh Rajput. The agricultural land bearing Gat No.138/1 situated in Mouza Khamgaon, admeasuring about 2.02 HR was purchased by the Deep Cooperative Housing Society Limited, Khamgaon, vide registered document bearing No.13121. The society applied for permission to convert the said land for non-agricultural/ residential use u/s 33 of the Maharashtra Land Revenue Code, 1966. Vide order dated 15.12.1984 said permission was granted by the

SDO Khamgaon and 40 plots were permitted to be carved out on the said land. Plot No.23 thereon actually admeasured 502.50 sq. meters but owing to typographical error, it came to be shown as 302.50 square metres. One Mr Prakash Ramchandra Gokhale was a member of the said society and as per the resolution passed by the said Society the said plot No.23 came to be owned by Mr. Gokhale vide partition deed. Vide registered sale-deed dated 04.06.1987 said plot No.23 admeasuring about 502.50 sq.meters was sold by Mr Gokhale to complainant Vijaysingh Namdevsingh Rajput. Thereafter since the complainant Mr. Rajput is a resident of Thane, mutation of his name as per his sale deed remained to be carried out. When for personal work and for getting his name mutated in record of rights, Mr. Rajput visited Khamgaon he learnt that on 7/12 extract of Plot No.23 already there is a name of applicant herein (Mr Pradeep Sontakke) claiming to have purchased Plot no.23 admeasuring about 302.50 sq.metres. from one Mahadev Pachpor vide registered sale deed dated 23.11.2017.

4. Accused No.1-Mr Pachpor has no relation with the Deep Cooperative Housing Society Ltd.,Khamgaon and he was not even its member. Knowing this fact fully well, accused no.3 Talathi-Mr Chopade, acting in collusion, got name of Mr.Pachpor, mutated on 7/12 extract vide Transfer Entry no. 9993. Perusal of the Transfer entry No. 9993 shall reveal that it has no concern with the plot in question. Accused No.1 to 3 including the applicant herein (accused no. 2) acting in collusion forged 7/12 extract and took fake transfer entry thereon to enable Mr Pachpor to sell the plot in question to the applicant herein. Accused persons have acted in collusion to take possession of the land of the complainant and have executed a registered sale deed on the basis of false revenue entries.

5. According to the Respondent No.1/State it has been revealed in the investigation that a fake partition deed of Mr.Prakash Gokhale (original owner of Plot No.23) was prepared by the accused persons. In the said fake partition deed, the original land admeasuring 502.50 sq.mtrs. was

shown to be bifurcated in the name of Mahadev Pachpor. The partition-deed is yet to be recovered from the accused persons. The said plot was thereafter sold by Mahadev Pachpor (accused no.1) to Pradip Sontakke (present applicant). The amount of sale consideration was deposited in the account of Mahadev. However the said amount has been withdrawn on the next day by co-accused Ramesh Raut. It is further revealed in the investigation that Plot No.23, in fact, belongs to Dr. Gokhale who sold it to one Vijaysingh Rajput vide sale deed dated 4th June 1987. The said sale-deed is still in existence. However, Ramesh Raut, Shri Chopde along with the present applicant and accused no.1 have committed fraud by preparing false 7/12 extract. It is further revealed that the names of accused persons have been mutated in the revenue records and that *ferfar* entry No. 9993 which in fact is an entry pertaining to plot No.115 belongs to one Prakash Morkhade. Thus, the said *ferfar* entry is not related to Plot No.23.

6. Mr. S.V.Sirpurkar, learned Advocate for the

applicant contends, and rightly so, that no case of whatsoever nature is made out against the applicant, even if the charge-sheet is accepted on its face value. The name of the applicant came to be mutated in the revenue records on the basis of the registered sale deed. The informant came to know about the mutation of entry and thereafter issued a notice through Advocate on 20th March 2019 to the applicant mentioning therein that the said plot belongs to him. The notice further directs the applicant to cancel the sale deed or to face civil as well as criminal litigation. The notice has been duly replied by the applicant vide reply dated 29th March 2019. It appears that the civil suit is filed on 4th July 2019 by the informant seeking declaration, permanent prohibitory injunction vide Special Civil Suit No.23/2019 at Khamgaon. In the said civil suit, the learned trial Judge has granted temporary injunction vide order dated 20th July 2019.

7. The learned APP or the learned Advocate for the non-applicant no.2 could not point out as to why the aforesaid facts were not considered by the Investigating

officer before filing the charge-sheet on 17th April, 2020. What we find from the charge-sheet is that the offence, if any, is made out against the other accused. The applicant appears to us to be a *bona fide* purchaser.

8. The contention of the learned Advocate for the respondent no.2 is that the sale deed dated 23rd November 2017 executed between the applicant and accused no.1 does not contain any recital as to how the ownership of Plot No.23 came to be transferred in the name of accused no.1 itself would suggest that the applicant is involved in the crime.

9. Drawing such an inference is far-fetched. The respondents have not pointed out as to what advantage applicant got out of said transaction. In fact, what appears from record is that he has paid requisite consideration amount of sale to the vendor-Mahadev Pachpor. Thus, the applicant is not put to any advantage to contribute to the act of cheating, if committed by the predecessor-in-title. The dispute, if any, qua the applicant is purely of civil in nature.

10. Viewed thus, the continuation of criminal

proceedings against the applicant would be a clear abuse of process of law. In our view, therefore, this is a fit case wherein the FIR and the charge sheet, both are liable to quashed and set aside. Accordingly, we pass the following order:-

ORDER

The Criminal Application is allowed. The charge-sheet dated 17.04.2020 vide No.43/2020 arising out of Crime No.243/2019 is quashed and set aside, to the extent of applicant only.

[ANIL L. PANSARE,J.]

[ROHIT B. DEO,J.]

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