

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

CRIMINAL APPLICATION NO.121 OF 2022

Adv. Ramesh Kashinath Patil
Age 61 years, Occu. Professional as
lawyer and Agriculture,
R/o Professor Colony, Motising Nagar
Pusad, Tq. Pusad, Dist. Yeotmal

... APPLICANT

VERSUS

1. The State of Maharashtra
through Pundlik Nagar Police Station,
Aurangabad, District Aurangabad
(Copy to be served on Public
Prosecutor, High Court of Judicature
of Bombay, Bench at Aurangabad)

2. Hirasing s/o Bhisuji Jadhav,
Age 62 years, Occu. Pensioner,
R/o Plot No.49, N-4, Cidco, Aurangabad
Tq. & Dist. Aurangabad

... RESPONDENTS

.....
Mr. S.B. Ghatol Patil, Advocate for applicant
Mr. D.R. Kale, Public Prosecutor for respondent No.1.
Mr. P.M. Nagargoje, Advocate for respondent No.2.

.....

WITH

CRIMINAL APPLICATION NO.167 OF 2022

1. Uttam s/o Bhisuji Jadhav,
Age 69 years, Occ. Agriculture,
R/o Tiwring, Tq. Mahagaon,
Dist. Yevatmal

2. Sou. Kamalbai w/o Uttam Jadhav,
Age 66 years, Occ. Housewife,
R/o Tiwring, Tq. Mahagaon,
Dist. Yevatmal

3. Nitin s/o Uttam Jadhav,
Age 37 years, Occ. Service,
R/o Jijau Nagar, Army Road,
Dist. Yevatmal.

... **APPLICANTS**

VERSUS

1. The State of Maharashtra
(Copy to be served on Public
Prosecutor, High Court of Judicature
of Bombay, Bench at Aurangabad)

2. Hirasing s/o Bhisuji Jadhav,
Age 67 years, Occ. Retired Police Officer,
R/o N-4, Cidco, Aurangabad

... **RESPONDENTS**

.....
Mr. N.S. Ghanekar, Advocate for applicant
Mr. D.R. Kale, Public Prosecutor for respondent No.1.
Mr. P.M. Nagargoje, Advocate for respondent No.2.
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

Date of reserving order : 2nd August, 2023

Date of pronouncing order : 9th August, 2023

ORDER :

Both these applications under Section 482 of the Code of Criminal Procedure (Cr.P.C. for short) are being decided by this common order since the challenge therein is to one and the same crime, being Crime No.0451/2021, registered with Pundliknagar Police Station, Aurangabad for the offences punishable under Sections 463A, 465, 467, 468, 471, 420, 120-B, 405 and 406 of the Indian Penal Code.

2. Heard. The F.I.R. has been lodged pursuant to an order passed under Section 156(3) of the Cr.P.C. The applicant in Criminal Application No.121/2022 is a practicing Advocate while the applicant No.1 in Criminal Application No.167/2022 is real brother of the informant (respondent No.2). The applicants No.2 and 3 in Criminal Application No.167/2022 are wife and son of applicant No.1. The dispute pertains to an amount of compensation awarded for acquisition of lands by National Highway authorities.

3. A gist of the allegations in the F.I.R. is that, some portion of the agricultural lands in Gut Nos.98, 123 and even 122 came to be acquired for National Highway No.361 Nagpur – Tuljapur. The respondent (informant) is a retired Superintendent of Police. He has been residing at Aurangabad. The lands acquired are situated at village Tiwring, Taluka Mahagaon, District Yavatmal. The applicant Advocate Ramesh Patil along with 2 – 3 others came to the house of the informant and obtained his signatures on certain documents without apprising him of contents thereof. When it was agreed between the two brothers, informant and the applicant No.1 in Criminal Application No.167/2022 that only certain portion of the amount of compensation awarded in respect of lands in Gut No.98 was to be received by the said applicant and his family members, the applicant Advocate Ramesh Patil misguided the informant and

obtained his signature on a forged document/s. Later on, it was realised that the entire amount was withdrawn by the applicants in (Criminal Application No.167/2022). Two Civil Suits were filed before the amount of compensation was received. It is also the case of the informant that he never appeared before the Notary Public. The documents were notarised by the applicant Advocate Ramesh Patil. Either he himself or someone else forged the signature of the informant in the register of the Notary.

4. Learned Advocates for the applicants first took us through the chronology of events of the happenings between the informant on one hand and the applicants in Criminal Application No.167/2022 on the other. We do not propose to refer here chronology of events with a view to avoid repetition. It was the submission of the learned Advocates that the informant was the retired Superintendent of Police. No one would buy his case that he signed the papers without knowing the contents thereof. The dispute is in fact of civil nature. The informant gave express consent to pay the entire amount of compensation in respect of land Gut No.98 to his brother and the family members. The following authorities have been relied on to ultimately urge for grant of the applications :-

- (1) (2013) 11 SCC 673
Paramjeet Batra Vs. State of Uttarakhand & ors.

Criminal proceedings to be quashed if civil remedy is available . . . particularly civil remedy is given texture of criminal nature.

- (2) (2018) 15 SCC 273
M. Suresh & ors. Vs. State of A.P. & ors.

Failed Sale Transaction – use of Criminal Law -
Civil Dispute - Criminal Case quashed.

- (3) (2021) 14 SCC 626
Rajendra Singh Vs. State of U.P. & ors.

Vague charge sheet – Criminal Case used as weapon
of harassment – Charge sheet quashed

- (4) 2017 ALL MR (Cri) 17
T. Chandramouli Vs. P.I. Vosco PS

In economical transaction of delivery of amount but not
executing sale deed – FIR for offence punishable under
Sections 417, 420, 506 r/w 34 is quashed holding that
it is nothing but abuse of process of law

- (5) Criminal Application No.3387/2005
Mohan Premnath Kothimbire Vs. State of Maharashtra & ors.

5. The learned Public Prosecutor and learned Advocate representing the informant would, on the other hand, submit that it was the applicant No.1 in Criminal Application No.167/2022 who lodged the objection with the Land Acquisition Officer-cum-Sub-Divisional Officer (LAO for short) first against releasing the amount of compensation payable to the informant in respect of land Gut No.123. His son also filed a civil suit, bearing Regular Civil Suit

No.26/2020. The informant too filed a civil suit, being Regular Civil Suit No.85/2020. No partition of the family properties had ever been effected. Finally it was an understanding between the two brothers that only certain amount of compensation would be received by applicant Uttam in respect of land Gut No.98. The applicant Advocate Ramesh Patil had come to the residence of the informant. He forged first page of a document dated 27/1/2021 and made him believe that applicant Uttam would receive compensation only to the extent of land admeasuring 1444 sq.mtrs. forming part of Gut No.98. Our attention was adverted to the said document. It was then submitted that, on the given day, the informant did not go to the office of a Notary at Yavatmal. It was the applicant Advocate Ramesh Patil who did every mischief. Either himself or someone else on his behalf forged the signatures of the informant in the register of a Notary. The informant had never been to the office of LAO. When the applicant Advocate Ramesh Patil was in the know that disputes arose between the two brothers, he ought not to have represented both of them before the LAO. A handwriting expert's report was also adverted to. The report indicates the questioned signature appearing in the Notary's register differs from the informant's admitted signature. According to learned counsel, there is a strong prima facie material to proceed against the applicants herein. No mini trial can be conducted. They, therefore, urged for

rejection of the applications.

6. Considered the submissions advanced. Perused all the documents relied on. There can be no dispute over what has been observed by the Apex Court in the authorities referred to hereinabove. We are conscious of the fact that if a case has a civil flavour, relief of quashment of F.I.R. or criminal proceedings need to be granted or at least the criminal proceedings to be stayed until the civil proceedings are finally decided. The question is, whether the facts and circumstances of the present case warrant grant of relief to the applicants, based on the said legal proposition. In our view, the answer is, big “No” as against some of the applicants. The reasons therefor are as under.

7. Bhisuji was was a common ancestor. He was survived by two sons and a daughter namely Uttam (one of the applicants), Hirasing (respondent No.2/ informant) and Kamlabai. Bhisuji left behind agricultural lands and even house property. The agricultural lands bearing Gut Nos.98, 123 and 122/1 to 122/4). It appears that, way back in 2010, partition-cum-family arrangement took place between the two brothers in respect of some of the family properties. Document evidencing the said transaction is not before us.

8. A partition of some of the family properties took place between the two brothers – applicant Uttam and informant Hirasing on 24/6/2016. The land, Gut No.98 (subject of acquisition) was allotted to the share of applicant Uttam. Land Gut No.123 was given to the share of informant while some portion of lands in Gut No.122/1 to 122/4 were given to the shares of son of applicant Uttam. Remaining portion thereof was given to the informant Hirasing. The effect of partition has been reflected in the revenue record by virtue of Mutation Entry No.580. The mutation entry has been certified.

9. As stated above, land admeasuring 5300 sq.mtrs. in Gut No.123 and total 10398 sq.mtrs. from Gut No.98 came to be acquired for National Highway No.361 Nagpur – Tuljapur. The award under National Highways Act, 1956 was passed on 8/11/2017. The amount of compensation payable for acquisition of land in Gut No.98 was paid to the applicants in Criminal Application No.167/2022 while compensation in respect of land Gut No.123 was received by informant Hirasing. While the award was passed, there was no dispute between the parties. They received the amount under protest. They preferred appeal against the award and claimed enhancement of compensation. The applicant

Advocate Ramesh Patil was representing all of them in the said proceedings. It was an appeal-cum-arbitration proceedings filed before the Additional Collector, Yavatmal. The Additional Collector allowed the appeal-cum-arbitration application vide order dated 22/7/2020, enhancing the compensation as under :

- (1) Land Gut No.98, area 8954 sq.mtrs. Rs.2,11,32,764/-
- (2) Survey No.98, area 1444 sq.mtrs. Rs.38,27,694/-
- (3) Land Gut No.123, area 5300 sq.mtrs. Rs.1,02,29,673/-

All was well between the parties until the Additional Collector allowed the appeals-cum-arbitration applications.

10. It was the applicant Uttam who first filed written objection dated 3/12/2020 before the LAO and objected to release/ pay the amount of compensation payable to the informant in respect of the acquisition of land in Gut Nos.122/1, 122/2 and 123. In paragraph No.4 of the said objection application, it is averred that, there was settlement between the parties way back in 2010. There is no reference to a partition that took place in the year 2016 and reflected in the revenue record. A specific averment in paragraph No.4 of the said objection application is as under :

“The non-applicant No.1 (informant herein) has now filed a Civil Suit bearing R.C.S. No.85/2020 which is pending before the CJSD, Pusad. In the said suit the non-applicant No.1 has averred that in spite of the mutual settlement in the year 2010 the properties continued to be joint family properties. He has therefore, claimed that he has an equal share in all the properties. He has also prayed for injunction restraining the authorities from disbursing the amount.”

11. The matter was even requested to be referred to the Civil Court for adjudication. It was only thereafter the informant lodged objection not to release the amount of compensation in favour of the applicants in Criminal Application No.167/2022 in respect of land Gut No.123.

12. A copy of the plaint in Regular Civil Suit No.85/2022 is on record. It is a suit filed by the respondent/ informant in October 2020. His claim therein was pertaining to land Gut Nos.98 and 122. He claimed half share in both the lands. The respondent also claimed equal share in the amount of compensation payable for the land in Gut Nos.98 and 122 (portion) acquired for National Highway. Even a prayer for restraining the LAO-cum-SDO from releasing the entire amount of compensation in favour of the applicants was made therein. A copy of the written statement filed by applicant Uttam was placed on record at the instance of us, wherein, reliance was made on the partition that took place in 2016. There is also on

record a copy of plaint in a suit filed by Dinesh, another son of the applicant Uttam. The said suit is filed against applicant Uttam and informant Hirasing. The main relief in the said suit was for declaration that document of partition dated 24/6/2016 is unauthorised and illegal. The applicant Uttam appears to have consciously not filed written statement to the said suit. The same suggests that he too did not approve of partition of the family properties that took place on 24/6/2016, wherein entire land Gut No.98 was allotted to his share.

13. Admittedly, the applicant Advocate Ramesh Patil was representing both, respondent Hirasing and his brother applicant Uttam in the land acquisition proceedings and in appeal-cum-arbitration application filed for enhancement of compensation. Herefrom, mischief commenced. It is true that, in an application under Section 156(3) of the Cr.P.C. moved by the respondent Hirasing there are general and vague allegations to the effect that all the applicants conspired together and prepared forged and fabricated documents and relying on the same, withdrew the amount of compensation of Rs.2,11,32,774/-, payable on account of acquisition of land in Gut No.98. It needs no mention that, before filing of an application under Section 156(3) of the Cr.P.C., one has to first approach the concerned police station. There is on record

an application-cum-F.I.R. dated 5/7/2021 preferred by the respondent Hirasing against all the applicants herein to the Police Station Officer, Pundliknagar Police Station, Aurangabad. The same contains details as to how the applicants committed alleged crime. It is not known as to why the concerned Police Station Officer did not register crime pursuant to the said report when commission of a cognizable offence is disclosed therefrom. Along with the said application to the police station, certain documents were submitted. A reference to those documents besides the documents relied on by the applicants is made hereinbelow.

14. There is a house property at Aurangabad. The plot was allotted to father Bhisaji as a lessee, by CIDCO. The informant Hirasing, on the demise of the father, moved an application for letters of administration. It was an application filed before the Court of Civil Judge, Senior Division. He claimed himself to be the sole legal representative of deceased Bhisaji and got the plot transferred to his name as successor-in-title by virtue of inheritance. The applicant Uttam preferred an application for recall of the order granting letters of administration in the name of informant Hirasing. We are not concerned with the alleged offence committed by respondent Hirasing in preferring the said application, i.e. making a statement on oath that he was the only legal heir to his deceased

father Bhisaji, while another brother – applicant Uttam and sister Kamlabai were there. Let the law take its own course in respect of the same.

15. Applicant Uttam filed application before the LAO on 19/1/2021, withdrawing his objection to release the amount of compensation in favour of informant Hirasing. Then there is document dated 27/1/2021 suggesting the informant Hirasing withdrawing his objection for release of the amount of compensation in favour of his brother – applicant Uttam. This document is dated 27/1/2021. The informant Hirasing admitted his signatures on this document. This document is notarised before a Notary at Pusad, District Yavatmal. Then there is document dated 21/1/2021, executed by applicant Kamlabai and Nitin in favour of applicant Uttam. They gave express consent for payment of entire amount of compensation to Uttam. They gave consent because their names appear in the revenue record of the land Gut No.98. In our view, in view of the said execution of the document, applicants Kamlabai and Nitin appear to have no role in the alleged crime except allegations of conspiracy. In our view, therefore, the crime registered against these applicants Kamlabai and Nitin needs to be quashed.

16. Then there is document titled as “क्षतिपूर्ती लेख” executed by informant Hirasing in favour LAO on 27/1/2021. It was the document in the nature of an undertaking-cum-bond. The informant Hirasing urged for release of amount of compensation payable to him. He agreed to pay back the amount if his brother Uttam could bring any order from Civil Court or ultimately it was found that he (Hirasing) was not entitled to receive the amount of compensation or any part thereof.

17. There is another document in the nature of “क्षतिपूर्ती लेख” executed by all the applicants (in Criminal Application No.167/2022) in favour of LAO. It is also in the nature of an undertaking and request for release of the entire amount of compensation in their favour with a condition that they would return the amount if it is found that they were not entitled to receive the same or any part thereof. There is also on record a copy of roznama of the acquisition proceedings. First entry therein indicates that both, the applicant Uttam and informant Hirasing appeared before the LAO and submitted all these documents (referred hereinabove) and urged for release of the amount of compensation. The LAO has, however, given a statement to the investigating officer that the applicants were never present before him and all the documents were submitted by the applicants’ Advocate on their behalf.

Admittedly, thereafter the amount of compensation payable to the respective claimant/s (applicant Uttam and informant Hirasing) was credited to their respective Bank Accounts. There is also on record a document titled as "समझौता लेख" (Deed of Settlement) executed on a stamp paper purchased in March 2017. It was said to have been executed on 28/7/2021. Long before the said document, the amount of compensation had already been deposited in the Bank Accounts of both Uttam and Hirasing. It is a document in the nature of defence of the applicants. Close reading of the said document would also indicate that one cannot rely on it at this stage, unless the same is duly proved.

18. A short question herein is, as to whether the applicant Advocate Ramesh Patil on behalf of applicant Uttam, forged certain documents and obtained signature of informant Hirasing on certain documents by practicing fraud or cheating him. Along with the application-cum-F.I.R. to the Police Station Officer dated 5/7/2021. A photo copy of a document executed on stamp paper No.939285 in the nature of "क्षतिपूर्ती लेख", executed by the applicants (in Criminal Application No.167/2022) in favour of LAO on 21/1/2021 alleged to have been forged and fabricated was produced. The original document in the custody of the investigating officer was produced before us. We have perused the same. The matter on

the first page thereof reads thus :

“क्षतिपूर्ती लेख”

राज्य मार्ग भू. अपील क्र. २२७/४७/२०१७-१८
व २०७/४७/२०१७-२०१८ मौजा भोसा

लिहून घेणार - मा. उपविभागीय अधिकारी तथा भूसंपादन
अधिकारी, उमरखेड यांचे कार्यालय

लिहून देणार - १) उत्तम भिसू जाधव, वय या ६४ वर्ष
२) कमलाबाई उत्तम जाधव वय अं. ५५ वर्ष
३) नितीन उत्तम जाधव, वय अं. ३६ वर्ष

सर्व रा तिवरंग ता. महागांव, जि. यवतमाळ

आम्ही क्षतिपूर्ती लेख लिहून देतो तो खालिलप्रमाणे -
आमचे संयुक्त मालकी व ताब्यातील मौजा भोसा ता. महागांव,
जि. यवतमाळ येथील शेत सर्वे नंबर ९८ मधील ८९५६ चौ.मि.
व १४४४ चौ.मि. शेत जमीन राष्ट्रीय महामार्ग क्रमांक ३६१
नुसार नागपूर ते तुळजापूर या चौपदरी रस्त्याच्या रुंदीकरणाचे
कामा करीता संपादित मारण्यात आली आहे. सदर शेत
जमिनीच्या मोबदल्याची रक्कम कमी मिळाल्यामुळे लिहून देणार
यांनी वि. लवाद अधिकारी तथा अपर जिल्हाधीकारी, यवतमाळ
यांचे कडे राज्य मार्ग भू. अपील प्रकरण क्रमांक
२२७/४७/२०१७-२०१८ व २०७/४७/२०१७-२०१८
अनुसार अपील दाखल करण्यात आले होते. या अपिलात
अपिलार्थी (लिहून देणार) यांना अपील मंजूर होवून वाढीव
मोबदल्याची रक्कम मंजूर करण्यात आली. सदर संपादित
जमिनीचे वर्णन खालील प्रमाणे आहे.

१)

क्षतिपूर्ती लेख

राज्य मार्ग भू. अपील क्र. २२७/४७/२०१७-१८
व २०७/४७/२०१७-२०१८ मौजा भोसा

लिहून घेणार - मा. उपविभागीय अधिकारी तथा भूसंपादन
अधिकारी , उमरखेड यांचे कार्यालय

लिहून देणार - १) उत्तम भिसू जाधव, वय या ६४ वर्ष
२) कमलाबाई उत्तम जाधव वय अं. ५५ वर्ष
३) नितीन उत्तम जाधव, वय अं. ३६ वर्ष

सर्व रा तिवरंग ता. महागांव, जि. यवतमाळ

आम्ही क्षतिपूर्ती लेख लिहून देतो तो खालिलप्रमाणे -

आमचे संयुक्त मालकी व ताब्यातील मौजा भोसा ता. महागांव,
जि. यवतमाळ येथील शेत सर्वे नंबर ९८ मधील चौ.मि. शेत
जमीन राष्ट्रीय महामार्ग क्रमांक ३६१ नुसार नागपूर ते तुळजापूर
या चौपदरी रस्त्याच्या रुंदीकरणाचे कामा करीता संपादित
मारण्यात आली आहे. सदर शेत जमिनीच्या मोबदल्याची रक्कम
कमी मिळाल्यामुळे लिहून देणार यांनी वि. लवाद अधिकारी तथा
अपर जिल्हाधीकारी, यवतमाळ यांचे कडे राज्य मार्ग भू अपील
प्रकरण क्रमांक २२७/४७/२०१७-२०१८ अनुसार अपील
दाखल करण्यात आले होते. या अपिलात अपिलार्थी (लिहून
देणार) यांना अपील मंजूर होवून वाढीव मोबदल्याची रक्कम
मंजूर करण्यात आली. सदर संपादित जमिनीचे वर्णन खालील
प्रमाणे आहे.

१) सर्वे नंबर ९८ क्षेत्रफळ १४४४ चौ.मि.

मोबदला रु.३८,२०,६९

the house of the informant at Aurangabad. It is the specific case of the informant that, relying on the first page of the forged document, he was informed by the applicant Advocate Ramesh Patil that the applicants in Criminal Application No.167/2022 would only receive enhanced amount of compensation of Rs.38,20,698/- payable in respect of land admeasuring 1444 sq.mtrs. in Gut No.98.

21. Comparison and reading of the aforesaid two documents would undoubtedly indicate that the document shown to the informant for obtaining his consent for release of amount of compensation in favour of the applicants in Criminal Application No.167/2022 contained reference to the amount of compensation pertaining to land admeasuring 1444 sq.mtrs. in Gut No.98, meaning thereby it was represented to the informant by the applicant Advocate Ramesh Patil that, the remaining amount of compensation of Rs.2,11,32,764/- would not be received by those applicants until the dispute over the same between the two brothers is settled on presentation of the said forged document to the informant Hirasing was made to give a No Objection for release of amount of compensation to the applicants in Criminal Application No.167/2022. The said consent letter is dated 27/1/2021. The second page thereof bears his signature. On the first page, he necessarily gave his consent for release of the amount of enhanced

compensation payable to the applicants since he was misled by presenting before him the forged/ tinkered page Nos.1 and 2 of the documents in the nature of "क्षतिपूर्ती लेख" executed by the applicants. It is true that, the tenor and reading of the consent given by respondent on 27/1/2021 may suggest that he gave No Objection to allow the applicants to receive the entire amount of enhanced compensation. At this stage, however, his case has to be believed when there were two suits pending, one filed by the son of applicant Uttam, challenging the partition dated 24/6/2016. In the said suit, applicant Uttam did not file his written statement. The documents have been notarised before a Notary at Pusad. The handwriting expert's report suggests signatures in the Notary's register shown to have been made by informant Hirasing differ from his admitted signature. The application-cum-F.I.R. lodged by informant Hirasing on 5/7/2021 to the concerned Police Station Officer contained details as to how he has been deceived and made to sign document of No Objection for release of entire amount of compensation payable in respect of Gut No.98. Involvement of the applicant Advocate Ramesh Patil and applicant Uttam (beneficiary) is prima facie writ large. As such, it is not a case of there being no material to proceed against them. As already observed above, the other applicants applicants No.2 and 3 in Criminal Application No.167/2022 had already given their No

Objection to pay the entire amount in the name of applicant Uttam. They have played no role in the alleged crime. We are, therefore, inclined to grant them relief.

22. In the result, the applicants stand disposed of in terms of the following order :

ORDER

- (i) Criminal Application No.121/2022 is rejected.
- (ii) Criminal Application No.167/2022 is partly allowed. The F.I.R. bearing Crime No.0451/2021, registered with Pundliknagar Police Station, Aurangabad for the offences punishable under Sections 463A, 465, 467, 468, 471, 420, 120-B, 405 and 406 of the Indian Penal Code is quashed as against applicant No.2 Sou. Kamlabai w/o Uttam Jadhav and applicant No.3 Nitin s/o Uttam Jadhav.
- (iii) Criminal Application No.167/2022 to the extent of applicant No.1 Uttam s/o Bhisuji Jadhav stands rejected.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-