

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.395 OF 2022

Ajay Gulabrao Pawar,
Age 50 years, Occu. Business,
R/o 29, Sahakar Nagar,
New Osmanpura, Aurangabad

... APPLICANT

VERSUS

- 1) The State of Maharashtra
through Satara Police Station

(Copy to be served through the
office of Public Prosecutor,
High Court of Judicature of
Bombay, Bench at Aurangabad)

- 2) Bhagwan Babasaheb Gorde,
Age 40 years, Occu. Contractor,
R/o No.11, F-21/7, Navjeevan Colony,
HUDCO, Aurangabad

... RESPONDENTS

.....
Mr. R.N. Dhorde, Senior Advocate with
Mr. S.V. Bhupi, Advocate for applicant
Mr. A.R. Kale, A.P.P. for respondent No.1.
Mr. S.P. Pandav, Advocate for respondent No.2.
.....

WITH

CRIMINAL APPLICATION NO.644 OF 2022

- 1) Vijaykumar s/o Ratanlal Patni,
Age 73 years, Occu. Business
R/o 57 P-1, Shakuntal Town Centre,
CIDCO, Aurangabad
- 2) Rajendra s/o Bansilal Dhakre

Age 50 years, Occu. Business,
R/o Plot No.85, Opp. Rupali Apartment,
Bansilal Nagar, Aurangabad ... **APPLICANTS**

VERSUS

- 1) The State of Maharashtra
through Satara Police Station,
Aurangabad
- 2) Bhagwan s/o Babasaheb Gorde,
Age 40 years, Occu. Contractor,
R/o No.11, F-21/7, Navjeevan Colony,
HUDCO, Aurangabad ... **RESPONDENTS**

.....
Mr. S.S. Bharuka, Advocate holding for
Mr. D.S. Bharuka, Advocate for applicant
Mr. A.R. Kale, A.P.P. for respondent No.1.
Mr. S.P. Pandav, Advocate with
Mr. Kalyan V. Patil, Advocate for respondent No.2.
.....

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

Date of reserving judgment : 26th June, 2023

Date of pronouncing judgment : 3rd October, 2023

JUDGMENT (PER R.G. AVACHAT, J.) :

Both these applications, under Section 482 of the Code of Criminal Procedure, are being decided finally at admission stage with the consent of learned counsel for the parties. The challenge in both these applications is to one and the same crime, being Crime No.533/2021, registered at Satara Police Station, Aurangabad for the offences punishable under Sections 420, 468,

471, 472, 120-B read with Section 34 of the Indian Penal Code and the consequential charge sheet bearing No.104/2022 (R.C.C. No.2226/2022), pending before the learned Judicial Magistrate, First Class, Aurangabad,

2. Heard. The First Information Report (F.I.R.) has been lodged pursuant to the order passed under Section 156(3) of the Code of Criminal Procedure. The F.I.R. is dated 1/12/2022. It has been lodged by the respondent No.2 (informant). It is his case that, he was a President of, "Bhagyadeep Industrial Co-operative Society Ltd." (for short the Society). The Society owns and possesses 60 R land in Gut No.225, situated at village Satara, Aurangabad. Onto the north of the land owned and possessed by the Society, there is land Gut No.222. The same is owned and possessed by Shri Gurudeo Builders and Developers (for short Gurudeo Builders). Gurudeo Builders is a partnership firm. The applicants are the partners in the firm. Moreover, there is land Gut No.219. 70 R land therein is also owned and possessed by the Society. Onto the west of the said land, there is land Gut No.220, owned and possessed by Gurudeo Builders.

3. It is further case of the informant that, land admeasuring 29700 sq.mtrs. in Gut No.220 has been permitted to

be used for Non-Agricultural (residential) purpose. The CIDCO sanctioned the lay-out thereof. Partners of Gurudeo Builders were erecting fencing on the land in Gut Nos.219 and 225 around the land owned by the Society. The informant resisted them from erecting fencing. The applicants along with Shri Sameer Bhandari and Sambhaji Atkare told the informant that they were erecting fencing around their field (land), The informant, therefore, asked them to show him documents justifying their claim. He also took search of certain relevant documents in the office of Deputy Superintendent of Land Records. The informant obtained relevant documents. He also made a complaint to the Administrator, CIDCO, Aurangabad. On enquiry, it was realised that, the map (sketch) that was presented by Sameer Bhandari and others for obtaining sanction for lay-out of their land was forged and fabricated. A joint measurement of the land Gut Nos.219, 220 and 225 was made on 24th and 25th of February 2021. The applicant Vijaykumar Patni and Sameer Bhandari requested the informant not to escalate the issue. They also assured the informant to give him amenity plot and other plots from the sanctioned lay-out. Gurudeo Builders raised objection for joint measurement. The office of Superintendent of Land Records, however, fixed the boundaries on 8/7/2021. The applicant Vijaykumar then lodged F.I.R. against the informant.

4. It is further the case of the informant that, after having probed the matter, it was realised, no measurement was in fact made either on 27/10/2020 or immediately therebefore, vide Measurement Register No.499/2010. The CIDCO had accorded sanction for the lay-out, relying on the map dated 27/10/2010. After having inspected the entire record, it was realised that the said map was forged and fabricated by the then applicants Sameer Bhandari and others. Thereafter, the plots in the sanctioned lay-out were sold to the applicant Vijaykumar and his partners. Relying on the very measurement map, the applicants attempted to commit encroachment on the land of the Society. The applicant Vijaykumar told the informant to have been in possession of the land since 2004 along with Semeer Bhandari and Sambhaji Atkare.

5. In short, it is the case of the informant that, the applicants and co-accused and others as well forged and fabricated the measurement map dated 27/10/2010, shown to have been made vide Measurement Register No.499/2010. For approval of a lay-out, certain land was required to be kept vacant and reserved for public amenities. The applicants and co-accused identified the land, for the said purpose, belonging to the informant Society. Even High Tension Tower is shown in the land of the Society. As such,

the applicants and co-accused duped the informant Society by fabricating false measurement map and making use thereof, knowing the same to have been forged and fabricated.

6. The crime was investigated and the charge sheet has been filed.

7. Learned Senior Advocate appearing for applicants in Criminal Application No.395/2022 and learned Advocate appearing for applicant in Criminal Application No.644/2022 would submit that, it is a civil dispute. A civil suit is subjudice. Moreover, civil proceedings relating to survey/ measurement and the maps drawn pursuant thereto has also been pending in appeal before the Superintendent of Land Records. The Superintendent of Land Records has been pleased to grant an order of status quo. Learned Advocates took us through various documents in the nature of sale deeds. According to them, the partnership firm (Gurudeo Builders) came into existence in 2014. Applicant Ajay Pawar became partner thereof in 2020. According to learned Advocates, the applicants had neither preferred the application for measurement nor did they have right, title and interest in the disputed land when the alleged measurement took place. According to them, the applicants are bona fide purchasers for

valuable consideration. It was also submitted that, a crime has been registered against the informant. Only with a view to counter the same, a false F.I.R. has been lodged. Both the learned Advocates ultimately urged for allowing the application.

8. Learned A.P.P. and learned Advocates appearing for the informant would, on the other hand, submit that, the averments in the F.I.R. prima facie make out involvement of the applicants in the crime in question. The F.I.R., therefore, cannot be quashed. It is a well settled proposition of law that, investigation of a crime cannot be stalled. Our attention has been drawn to certain communications made by CIDCO authorities with the office of Aurangabad Municipal Corporation (AMC) and the office of Superintendent of Land Records. The said communications undoubtedly indicate, no measurement in fact took place and the measurement map dated 27/10/2010 drawn pursuant to the measurement Register No.499/2010 was forged and fabricated. In spite of having knowledge thereof, the applicants relied on the said measurement map for further measurements and other proceedings in relation to fixation of boundaries of the land Gut Nos.219, 220 and 225 and parts thereof purchased by Gurudeo Builders and the Society.

9. The informant has filed his affidavit-in-reply describing therein the chronology of events. According to him, the measurement map drawn pursuant to Measurement Register No.499/2010 does not bear signature of a Surveyor who measured the land and has drawn the map. This fact goes a long way to make out a case of involvement of the applicants and co-accused in the crime in question. Statement of applicant Vijaykumar was also adverted to suggest that he was in the picture since 2009. According to learned Advocates, same set of facts can give rise to two proceedings, one criminal and other of civil nature. Learned Advocates ultimately urged for rejection of the applications.

10. Considered the submissions advanced. Perused all the documents relied on. Also perused the authorities pressed into service. Pending the applications, investigation of the crime was over and the charge sheet has been filed. Reliance on the judgment of the Apex Court in case of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & ors. (Criminal Appeal No.330/2021)**, decided on 13/4/2021 would, therefore, be of little assistance to the informant, wherein it has been observed :-

“(i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code

to investigate into a cognizable offence;

(ii) Courts would not thwart any investigation into the cognizable offences;

(iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

(iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases' (not to be confused with the formation in the context of death penalty).

(v) While examining an FIR/ complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/ complaint.

(vi) Criminal proceedings ought not to be scuttled at the initial stage;

(vii) Quashing of a complaint/ FIR should be an exception rather than an ordinary rule;

(viii) Ordinarily, the Courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere."

11. Let us now advert to the factual matrix. There were three lands bearing Gut Nos.220, 219 and 225. Land Gut No.220 admeasured 4 H 36 R. It was held by three persons namely Shaikh

Mujaffar Umar, Mujtaba Munib Farukh and Maqsudkhan Masoodkhan. Their respective share in the said land was – 1 H 62 R, 1H 28 R and 1 H 46 R. On 12/4/2010, Shaikh Mujaffar Umar and Mujtaba Munib Farukh sold 80 R and 19 R land respectively to Mrs. Darshana Bhandari and others. On the same day, Shaikh Mujfarrar Umar and Mujtaba Munib Farukh sold 82 R and 17 R land respectively to M/s Yash Promoters and Builders. Again on the very day, Maqsud Masud Khan and Mujtaba Munib Farukh sold land admeasuring 50 R and 49 R respectively to Ramanlal Chunilal Bhandari and others. As such, the total land in Gut No.220 sold on 12/4/2010 was 2 H 97 R i.e. 29700 sq.mtrs. On 28/1/2011, Fortune builders, a partnership firm of Sameer Bhandari and others purchased 75.25 R portion out of the 2 H 97 R land from Mohd. Ashpak, Mohd. Zakir Hussain and Mohd. Anis Razzak. The firm – Fortune Builders thus became co-owner of the land Gut No.220. Copies of all the registered sale deeds referred to above have been placed on record. Those have not been taken exception to.

12. The partnership firm – Gurudev Builders, of which the applicants are partners, came into existence in December 2014. The registration certificate of the partnership firm is on record. There is also a document on record to indicate the applicant Ajay Pawar to have become partner of the said firm in 2020. True, his

wife was a partner of the said firm since formation of the partnership.

13. It is reiterated that, the measurement map dated 27/10/2010 drawn pursuant to Measurement Register No.499/2010 is alleged to be a forged and fabricated document. The same is said to have come into being/ existence pursuant to an application for measurement moved by – Shri R.R. Bhandari, Shri S.R. Atkare, Shri R.C. Bhandari, Shri Mohammed Irfan Abdul Rajjaq, Mrs. Aparna S. Atkare, Shri Gulam Javed Gulam Rasool, Shri Mohammed Asfaq Abdul Rajaq, Shri Md. Zaker Husain Md. Sheekur Husain, Mrs. Darshana S. Bhandari, Shri Arjun Ramkrishna Atkare, Shri Mohammed Anis Abdul Rajjaq, Shri Arjun Ramkrushna Atkare, Shri Mohammed Anis Abdul Rajjaq and Shri Shaikh Fasiuddin Sirajoddin. There is on record a communication made by Town Planning Officer, Aurangabad Fringe Area to these persons on 19/10/2012. The same suggests that, they had made an application on 15/6/2012 for tentative lay-out permission for residential purpose on part of the land Gut No.220. There is a letter dated 23/12/2010 of the Town Planning Officer to the aforesaid persons, informing grant of the lay-out on certain conditions. The Society purchased 60 R land in Gut No.225 post the tentative lay-out of the land in Gut No.220 was granted. It is true that, there is

communication between CIDCO authorities, Municipal authorities and the office of the Superintendent of Land Records, suggesting that no measurement map dated 27/10/2010 was in existence in the office of Superintendent of Land Records. As per the affidavit-in-reply of the informant, the sanction for the lay-out was obtained by producing a false and fabricated map dated 27/10/2010. It is reiterated that, Sameer Bhandari and others (named above) were the applicants who had applied for sanction of the lay-out of the land in Gut No.220. Undisputedly, it is only in January 2015, Gurudeo Builders, of which the applicants are partners, purchased plot No.3 along with some portion of plot Nos.1 and 2 and also amenity plot including 60% of proportionate share in open space, road and area affected by High Tension Electric line as per the sanctioned lay-out. Thereafter, the measurement and remeasurement of the respective lands took place on account of a dispute over the boundaries of the lands purchased by respective claimants including Gurudeo Builders and the Society. We do not propose to refer to and rely on the events and documents relating thereto since the same has no much relevance for deciding the present applications.

14. The question is, whether the present applicants were the privy or have played any role in making a false and fabricated

document in the nature of measurement map dated 27/10/2010. The answer thereof would be a big No, since the present applicants in their capacity as partners of the firm Gurudeo Builders purchased the plots long after (4 years) the alleged forged and fabricated map came into being. Since Gurudeo Builders purchased the plots in the sanctioned lay-out for a valuable consideration, there would be nothing wrong if the said firm and its partners make efforts to defend their title to the plots they have purchased in January 2015. There is also nothing to indicate the present applicants to have any knowledge of the measurement map dated 27/10/2010 to have been forged one and still they made use thereof. It is true, a civil suit has been pending and proceedings before the authorities under the Maharashtra Land Revenue Code, 1966 (officials of Superintendent of Land Records) are subjudice. We are not granting the applicants relief on the ground of it being a civil dispute, more so when there is some communication between the aforesaid three offices namely, CIDCO, AMC and Superintendent of Land Records, suggesting that no measurement in fact took place in and around October 2010 and no such map was drawn pursuant to the Measurement Register No.499/2010. These observations have specifically been made, since the allegations about making false, and fabricating the said map may be justified against those aforesaid persons who had applied on 15th June for obtaining

sanction for tentative lay-out. Since none of the applicants before us are from the group of those persons and the firm of the applicants and others to have purchased certain plots long after the alleged forged map came into being, and they being entitled to defend their title to the plots purchased, it can be said that, there is no material to proceed against any of the applicants. Directing them to stand trial based on no material would necessarily be an abuse of process of Court. We are, therefore, inclined to allow both the applications. Hence the order :

ORDER

- (i) Criminal Application No.395/2022 is allowed in terms of prayer clauses (B) and (BB).
- (ii) Criminal Application No.644/2022 is allowed in terms of prayer clauses (B) and (B-A).

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-