

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.266 OF 2022
WITH
CRIMINAL APPLICATION NO.879 OF 2023
IN CRIMINAL WRIT PETITION NO.266 OF 2022

Kailash s/o Baburao Maind
Age: 44 years, Occu.: Business,
R/o. B-408, Hari Vihar Housing
Society, Jail Road, Near Bacchav
Class, Narayan Bapu Nagar,
Nashik – 422101.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. The Inspector General of Police,
Nashik Division, Nashik.
3. The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar.
4. The Police Station, Shirdi,
Tq. Rahata, Dist. Ahmednagar,
Through its Police Inspector.
5. Mr. Gulabrao Patil,
Age: 52 years, Occu.: Service as
Police Sub Inspector, Police Station,
Shirdi, Tq. Rahata, Dist. Ahmednagar.
6. Pravin Datre
Age: 47 years, Occu.: Service as
Police Sub Inspector, Police Station,
Shirdi, Dist. Ahmednagar.
7. Prashant s/o Suresh Mundlik,
Age: 37 years, Occu.: Business,

- R/o. Rahata, Tq. Rahata,
Dist. Ahmednagar.
8. Sagar s/o. Suresh Mundlik,
Age: 32 years, Occu.: Business,
R/o. Rahata, Tq. Rahata,
Dist. Ahmednagar.
9. Bhagwan s/o Rajaram Chavan,
Age: 60 years, Occu.: Business,
R/o. Bhaji Mandai, Shirdi,
Tq. Rahata, Dist. Ahmednagar
10. Amol Bhausahab Borade
Age: 35 years, Occu.: Business,
R/o. Bhaji Mandai, Shirdi,
Tq. Rahata, Dist. Ahmednagar.

.. Respondents

...
WITH
CRIMINAL WRIT PETITION NO.420 OF 2023

1. Sagar s/o Suresh Mundlik
Age: 32 years, Occu.: Business,
2. Prashant s/o Suresh Mundlik
Age: 36 years, Occu.: Business,
Both r/o. Rahata,
Tq. Rahata, Dist. Ahmednagar

.. Petitioners

Versus

1. The State of Maharashtra
Through the Special Inspector General
of Police, Nasik Region, Nasik.
2. The Superintendent of Police, Ahmednagar.
3. The Police Inspector,
Shirdi Police Station, Shirdi,
Tq. Rahata, Dist. Ahmednagar.
4. The Police Sub-Inspector/Investigation Officer,
Shirdi Police Station, Shirdi,
Tq. Rahata, Dist. Ahmednagar.

5. Kailas s/o Baburao Maind
Age: 45 years, Occu.: Business,
R/o. 408B, Hari Vihar Housing Society,
Narayan Bapu Nagar, Nasik Road, Nasik,
Tq. and Dist. Nasik.

.. Respondents

...
WITH
CRIMINAL APPLICATION NO.4436 OF 2022
IN CRIMINAL WRIT PETITION NO.266 OF 2022

1. Sagar s/o Suresh Mundlik
Age: 32 years, Occu.: Business,
2. Prashant s/o Suresh Mundlik
Age: 36 years, Occu.: Business,
Both r/o. Rahata,
Tq. Rahata, Dist. Ahmednagar

.. Petitioners

Versus

1. The State of Maharashtra
Through the Police Inspector,
Shirdi Police Station, Tq. Rahata,
Dist. Ahmednagar.
2. Kailas s/o Baburao Maind
Age: 45 years, Occu.: Business,
R/o. 408B, Bari Vihar Housing Society,
Narayan Bapu Nagar, Nasik Road,
Nasik, Tq. and Dist. Nasik.

.. Respondents

...

Mr. V. D. Sapkal, Senior Counsel i/b Mr. Yuvraj S. Choudhari,
Advocate for petitioners in Criminal Writ Petition No.266 of 2022 and
in Criminal Application No.879 of 2023.

Mr. R. S. Deshmukh, Senior Counsel i/b Mr. R. C. Bora, Advocate for
petitioners in Criminal Writ Petition No.420 of 2023 and Criminal
Application No.4436 of 2022.

Mr. Ashok A. Mundhe, Advocate for respondent Nos.9 and 10 in
Criminal Writ Petition No.266 of 2022.

Mr. R. D. Sanap, APP for respondent – State in all the matters.

...

**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

RESERVED ON : 2nd May, 2023.

PRONOUNCED ON : 6th June, 2023.

JUDGMENT :- (Per Smt. Vibha Kankanwadi, J.)

. All these petitions are between the same parties and arising out of the same set of facts, however, after hearing the submissions, when disinclination is shown to grant any relief that has been claimed in Writ Petition No.420 of 2023, which was filed for directions, learned Senior Counsel Mr. R. S. Deshmukh instructed by learned Advocate Mr. R. C. Bora for the petitioners seeks withdrawal of the petition. Accordingly, the Writ Petition No.420 of 2023 stands disposed of as withdrawn.

2. As regards the other three matters are concerned, Writ Petition No.266 of 2022 has been filed by the original informant, who has lodged FIR vide Crime No.25 of 2022 on 28.01.2022 with Shirdi Police Station, Dist. Ahmednagar, praying that the investigation be handed over to another agency and certain Sections of Indian Penal Code to be added to the said FIR. In connection with the same, Criminal Application No.879 of 2023 has been filed for permitting the petitioner – original informant to bring certain documents on record. Criminal Application No.4436 of 2022 has been filed by the original

accused persons seeking quashment of the FIR under Section 482 of the Code of Criminal Procedure, which has been lodged by the petitioner in Writ Petition No.266 of 2022 i.e. original informant vide Crime No.25 of 2022 with Shirdi Police Station, Dist. Ahmednagar for the offences punishable under Sections 454, 380, 427 read with Section 34 of Indian Penal Code.

3. Heard learned Advocate Mr. V. D. Sapkal, Senior Counsel instructed by learned Advocate Mr. Yuvraj S. Choudhari, Advocate for petitioners in Criminal Writ Petition No.266 of 2022 and for applicants in Criminal Application No.879 of 2023, learned Advocate Mr. R. S. Deshmukh, Senior Counsel instructed by learned Advocate Mr. R. C. Bora, Advocate for petitioners in Criminal Writ Petition No.420 of 2023 and for applicants in Criminal Application No.4436 of 2022, learned Advocate Mr. Ashok A. Mundhe, Advocate for respondent Nos.9 and 10 in Criminal Writ Petition No.266 of 2022 and learned APP Mr. R. D. Sanap for respondents – State in all the matters.

4. It has been vehemently submitted by learned Senior Counsel Mr. V. D. Sapkal instructed by learned Advocate Mr. Y. S. Choudhari for the original informant that the property bearing Gat No.394 situated at Shirdi, Tq. Rahata and Dist. Ahmednagar is the house

property and it was purchased in the name of the petitioner and his wife Pramila. The said property is situated near the temple of Shri. Sai Baba. They had decided to purchase the residential premises at Shirdi and therefore, the suit property, which was admeasuring 50.07 square meters, was purchased by them in the year 2018 from one Quadri. Since then they are in possession of the house property. In 2018, the petitioners had decided to construct lodging over the said house property. They were approached by one Swapnil Pardhe for construction of commercial complex on the said property. It was then told that he is willing to purchase two shops on behalf of accused Nos.7 and 8. The deal was fixed. As the petitioners were in need of money to construct the commercial complex, they decided to sell 40 square meters out of 50.07 square meters to original accused Nos.1 and 2. The total construction of 69.03 square meters out of total 92.04 square meters was to be given to original accused Nos.1 and 2. The sale-deed was executed between the wife of the petitioner and accused Nos.7 and 8 on 28.09.2018, however, incident took place on 29.12.2021. Prior to that, original accused Nos.1 and 2 had approached the Civil Court and they had prayed for injunction, which was rejected by the Court. On 29.12.2021, around 10.30 a.m., it was informed to the informant, who ordinarily resides at Nashik that accused Nos.1 and 2 had come along with their associates. They

broke open the house of the informant and by committing trespass they had demolished the wall of the house and articles worth Rs.67,000/- (of which details have been given in the FIR) have been stolen by them. In respect of the said incident he therefore lodged the said FIR, but it has also a story. The neighbours of the informant at Shirdi had informed about the incident to the informant on the same day and, therefore, the petitioner had come to Shirdi immediately. Police authorities are not ready to take his FIR and therefore, the petitioner had filed online complaint on 30.12.2021. Thereafter, petitioner had approached the Inspector General of Police, Nashik Division, Nashik with the request that his FIR should be recorded. After great persuasion the police authorities had then taken the said written complaint after about a month i.e. on 28.01.2022 at 1.26 a.m. The delay in lodging the FIR is due to the police machinery. It has been further submitted by the learned Senior Counsel appearing for the original informant that though the original accused Sagar Mundlik had lodged Regular Civil Suit No.376 of 2018 for injunction, the wife of the petitioner came to be added as party defendant in the suit at the later stage. Summons was not received by the wife of the petitioner. She had not even engaged Advocate Mr. A. S. Nikale, however, the documents with the Civil Court would show that she had engaged the said Advocate and even

filed written statement on her behalf. The signatures on the Vakalatnama as well as on the written statement is not of the wife. The matter proceeded *ex parte*. Examination-in-chief of Sagar Mundlik was taken on record. The affidavit at the behest of Pramila was sworn before the Court under her signature on 02.03.2019 and that document came to be filed before the Court, however, the said person is not the wife of the petitioner. The application Exhibit-05 seeking temporary injunction came to be allowed by the Court by order dated 16.03.2019. It appears that by impersonating the wife of the petitioner all those things have been got done. That amounts to playing fraud upon the Court. The learned Senior Counsel has taken us through those documents which according to him are the suspected documents before the Civil Court and also he has taken us through the complaint that was lodged by Advocate Mr. Nikale with the Bar Council of Maharashtra and thereafter the said Advocate Mr. Nikale has lodged FIR against original accused Nos.1, 2 and unknown lady with Rahata Police Station, Dist. Ahmednagar vide Crime No.227 of 2023 for the offences punishable under Sections 467, 468, 471, 419, 420 read with Section 34 of Indian Penal Code on 17.04.2023. Learned Senior Counsel for the original informant, therefore, submits that when all these things were going on, it is quite clear that the police authorities have not investigated the matter properly. They

were not justified in not registering the FIR of the petitioner and they are unnecessarily protecting the original accused Nos.1 and 2 and, therefore, the investigation needs to be handed over to some different agency and also it is necessary to add Section 166 and 167 of the Indian Penal Code to the FIR vide Crime No.25 of 2022 against the police authorities at Shirdi. In connection with the same in the application for production of documents i.e. Criminal Application No.879 of 2023, it has been prayed that the Roznama, summons copy, complaint application by the wife of the informant to the Bar Council of Maharashtra should be allowed to be brought on record in this writ petition.

5. The learned Senior Counsel Mr. R. S. Deshmukh instructed by learned Advocate Mr. R. C. Bora for the original accused Nos.1 and 2 vehemently submitted that the informant's wife has sold the said property to the applicants (original accused Nos.1 and 2) (hereinafter referred to as original accused Nos.1 and 2). When the wife of the informant was no longer the owner of the property, there was no question of committing theft by the owner themselves and also the house trespass. The wife of the informant has not lodged any report with the police. Now, the investigation is over and charge-sheet is also filed, therefore, there is no question of handing over the investigation to any other agency. Perusal of the entire charge-sheet

would show that no document has been produced to show that the ownership of the stolen articles was with the wife of the informant. Informant is a Hindu, yet the list of the stolen articles would show that there was a book of Quran. Definitely, those articles appear to be of the erstwhile owner Quadri, who might have left those articles there itself. When the sale-deed was executed, the possession of the entire property was given. Therefore, when the possession of all those articles was with the original accused Nos.1 and 2, they can't be branded as thieves. All these things were noted by the Civil Court when the temporary injunction was granted. Regular Civil Suit No.94 of 2020 was filed on 07.03.2020 and it was against one Bhagwan Rajaram Chavan and Amol Bhausahab Borade, who were raising obstruction. The said suit came to be decreed on 07.07.2021 against those persons. When they were still obstructing, accused No.2 filed Regular Darkhast No.22 of 2021 and sought police protection for carrying out the repairs. That application was also allowed by the competent Civil Court and accordingly, the necessary charges were deposited on behalf of the accused with the police authorities.

6. The learned Senior Counsel for original accused Nos.1 and 2 have taken us through the seizure panchanama dated 01.02.2022 wherein it is said that witness Amol Bhausahab Borade had shown the police authorities where the stolen articles have been kept. He is

the same defendant No.2 in R.C.S. No.94 of 2020. How he came to know about the alleged place is a mystery. It is shown in the said seizure panchanama that those articles were kept in a tin shed. If we consider his statement under Section 161 of the Code of Criminal Procedure, he is rather claiming ignorance by saying that he was not knowing the informant or his wife. Under such circumstance, then how he has been brought in picture can only be seen from the fact that there appears to be some domestic dispute between him and accused No.2. Accused No.2's wife is the cousin sister of Amol Borade. When his statement was recorded on 28.01.2022, he totally claimed ignorance about the incident where the stolen articles would have been taken, but then the seizure panchanama dated 01.02.2022 which is a handwritten and the date has its own corrections, shows that he has shown the said place. Then another statement of said Amol Borade has been taken on 01.02.2022, which appears to be the supplementary statement and then it is said that he came to know about the fact that where the articles have been kept. It is then said that he had taken one room which is in the name of accused Nos.1 and 2 and discovered about 14 articles. Said Mehboob Shahnawaz Quadri, who was the earlier owner, in his statement under Section 161 of the Code of Criminal Procedure dated 05.02.2022 stated that when he had sold the house to informant, at that time, his certain

articles and documents were there in the said premises, which was sold. All these facts would cover that a false case has been registered and it would be injustice to the applicants - original accused Nos.1 and 2 to face the trial and, therefore, he prayed for quashment of the FIR. He also prayed for the dismissal of writ petition, which has been filed by the informant.

7. At the outset, we would like to deal with Criminal Application No.4436 of 2022 first. It is not in dispute that by sale-deed dated 28.09.2018 accused Nos.1 and 2 purchased 40 square meters out of 50.07 square meters from City Survey No.394 situated at Shirdi, Tq. Rahata, Dist. Ahmednagar. If we consider the copy of the sale-deed, then it can be seen that the said portion which was sold i.e. 40 square meters had the Property No. (Old) 1-262-0 and (New) A3000027, which was also having 69.03 square meters tin shed out of 92.04 square meters. The boundaries have been given as towards east there is property of one Shejwal, towards south there is road, towards west there is 9 meter road and towards north the office of Shirdi Nagari Patsanstha. Interesting point to be noted is that while describing the said property which was sold i.e. 40 square meters where the rest of the property i.e. 10.07 square meters was situated is not stated in the said description by boundaries. The sale-deed also bears the clause of handing over the possession. Under such

circumstance, if we take the document as it is, which is admitted, the wife of the informant has sold the said property and given it in possession to accused Nos.1 and 2. When the notice of this application under Section 482 of the Code of Criminal Procedure has been given to respondent No.2 – informant, he has not filed any such document to show that what was there in the remaining property and if we consider the contents of his Criminal Writ Petition No.266 of 2022, then how he was supposed to build a shopping complex in 10.07 square meters, would be a question. Though we are not required to go into those aspects the fact thus remains. Further, we will have to take note of the fact that earlier accused Nos.1 and 2 had filed Regular Civil Suit No.94 of 2020 before the learned Joint Civil Judge Junior Division, Rahata against said Bhagwan Rajaram Chavan and Amol Bhausaheb Borade contending that they are raising the obstruction to the possession of the plaintiffs therein. If we consider the copy of the judgment in Regular Civil Suit No.94 of 2020, the 40 meters area was the suit property. In spite of issuing summons, the defendants therein did not appear and therefore, the said suit came to be decreed *ex parte* on 07.07.2021. It appears that the said decree was never challenged by the defendants therein or even the present informant and his wife. Further, there was also Regular Civil Suit No.336 of 2018 filed by original accused Nos.1 and 2 against the wife

of original informant and the copy of the order below Exhibit-05 has been given. The temporary injunction was granted on 16.03.2019 in respect of the possession of the plaintiff therein i.e. accused No.1 against the wife of respondent in respect of 40 square meters area which she had sold to him. Now, the contention is raised and the documents are produced on record stating that the Advocate who was representing her in the said suit was never engaged by her and it is said that by impersonating her, the said order has been obtained. Even the FIR has been lodged by the said Advocate vide Crime No.227 of 2023, but certainly there appears to be huge delay and the said FIR appears to be the outcome of the complaint lodged by the wife of the informant against the concerned Advocate before the Bar Council of Maharashtra. That FIR is not the subject matter in this case, but the fact remains is that such facts have taken place after the alleged incident. We are more concerned with the alleged incident.

8. As regards the incident is concerned, the informant is not the eye witness. Now, the investigation is over and entire charge-sheet is before this Court. The supplementary statement of the informant has been recorded on 29.01.2022. It is in fact a somersault to the documents of sale-deed and even the FIR and also it is not in consonance with the contentions raised in criminal writ petition by the informant. No doubt, in his supplementary statement also he

admits that 40 square meters area was sold by his wife to accused Nos.1 and 2 on 28.09.2018, but then he comes with the case that there was an agreement executed on the same date, wherein it was agreed that a shop should be erected 13 feet above the ground level and the entire expenses as well as all necessary permissions would be brought by the informant, however, one Sindhubai Ulhas Salve lodged civil suit against the wife of the informant as well as accused Nos.1 and 2 and, therefore, no construction has been made by them and even the possession has not been given by them to the accused. At the cost of repetition, the sale-deed contains a specific note of handing over of the possession on the date of sale-deed. Further, if there was no construction at all in the said 40 square meters area, then where the construction was, of which the wall was allegedly demolished by accused Nos.1 and 2. Description of a structure made up on cement, bricks i.e. concrete is not appearing in sale-deed or even FIR or even the supplementary statement. The statement of the wife of the informant has been recorded on 08.02.2022 and she is also now saying that she had not handed over the possession of the premises, which were sold to the accused Nos.1 and 2. No doubt, this is not a Civil Court which can go into the further aspects of the matter, but still the question that remains is if those persons wanted to enter into an agreement of development or agreement for

construction and then sale, then why the sale-deed was executed. Why there should be two separate documents i.e. sale-deed as well as agreement, those are the obvious questions which are arising in this case. There is statement of one Tushar Shejwal recorded on 22.02.2022. In his statement, he has stated that the said property in question was in fact purchased by his grandmother from Dr. Quadri and then her grandmother had sold it to informant and then informant sold it to accused Nos.1 and 2. No doubt, it appears that he is resident of Shirdi, but why he should know about the transactions between the informant and accused Nos.1 and 2 is a question, but still he appears to be the witness who had seen that the accused Nos.1 and 2 were taking the articles in two tempos. He then states that the articles were belonging to the informant. Thereafter there are statements of two witnesses, who are the owners of the tempo, who were stated to be engaged by the accused persons. Thus, it is to be noted that except said Shejwal nobody else is the eye witness.

9. The charge-sheet which is the outcome of the investigation of Crime No.25 of 2022 would raise so many questions i.e. doubtful circumstances those have been already referred earlier. Still, in the nutshell, the role played by Amol Bhausaheb Borade raised questions. He was defendant No.2 against whom the accused Nos.1 and 2 had filed the suit. In his statement, he claimed ignorance, but

then surprisingly in the supplementary statement, he comes up with the case that he knows the place where the articles have been kept and the seizure has been effected. If we consider the list in the seizure panchanama, article Nos.1, 2 and 3 appear to be the documents of Dr. Quadri, the earlier owner, who in his statement under Section 161 of the Code of Criminal Procedure, admits that he had left certain documents belonging to him in the premises itself. The other articles are the household articles and there is absolutely no such mark which would show the ownership thereof. Interestingly, the seizure panchanama at the end bears a signature of the person from whose possession the articles have been seized, but whose signature it is, has not been written on the same. So also, it raises a question under which provisions of law the said panchanama can be held to be admissible. Said Amol Borade, who allegedly showed the articles, cannot be the person in whose custody those articles were. None of the accused were present in the said premises at that time. There is no documentary evidence as to exactly where the said shed is situated and who is the owner of the same. Merely because the said witness i.e. Amol Borade was saying that the said shed belong to accused No.1, it appears that the seizure has been effected. The investigating officer appears to have not taken steps to call accused No.1 at the said place. It is also stated that

the shed had wooden door and there was a latch to it which was opened by the witness namely Amol Borade. Therefore, all these things are suspicious. If we consider the statement of both the drivers of the tempo, who were allegedly engaged on 29.12.2021, they have stated that the owner is one Sachin Bendre, who directed them to go to Shirdi as the articles from the house of accused Nos.1 and 2 are required to be shifted. Accordingly, they went to the place, took the articles and it is stated that some of the articles were taken to Kalika Nagar, Shirdi and some articles were taken to Rahata. Now, they have not explained which was the place at Rahata. Therefore, their statement cannot be tagged with seizure panchanama dated 01.02.2022. Further, as aforesaid both of them have stated that the instructions were to transport the articles belonging to accused Nos.1 and 2. They have stated that they had gone to Sonargalli in Shirdi from where articles were loaded. If we consider the sale-deed, there is no mention of Sonargalli while describing the said property. Therefore, independently if we consider whatever the investigation has been done and the charge-sheet is now produced, it will not attract the ingredients of Section 454, 380, 427 of Indian Penal Code. Therefore, the case definitely fits in the parameters in ***State of Haryana and others Vs. Ch. Bhajanlal and others, [AIR 1992 SC 604]***. We would like to further rely on the decision in ***Sri.***

Sureshkumar Goyal Vs. State of U.P., (2019) 14 SCC 318, wherein the decision in ***Rajiv Thapar Vs. Madan Lal Kapoor, (2013) 3 SCC 330*** has been referred, wherein in addition to parameters laid down in ***Ch. Bhajanlal*** (Supra), following factors have been considered :-

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 Cr.P.C.

30.1. Step one : whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two : whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3 Step three : whether the material relied upon by the accused has not been refuted by the production/complainant; and/or the material is such

that it cannot be justifiably refuted by the prosecution/complainant?

30.4 Step four : whether proceeding with the trial would result in an abuse of process of the Court, and would not serve the ends of justice?

30.5 If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

Therefore, Criminal Application No.4436 of 2022 deserves to be allowed.

10. We are aware that there were certain civil litigations in respect of the property, but still the civil litigation was not in respect of questioning the ownership of the original accused Nos.1 and 2 over area of 40 square meters, which is sold by the wife of the informant under the said registered sale-deed. Another important fact is that in the FIR, the informant is totally silent regarding the alleged agreement of the same date i.e. 29.12.2021 as well as it is absent in

his written complaint dated 31.12.2021 given to the Inspector General of Police, Nashik Division, Nashik and also on the point that the possession of the sold property was not handed over to the accused Nos.1 and 2. Therefore, there is no hurdle for this Court to exercise the powers under Section 482 of the Code of Criminal Procedure. One more aspect that has been tried to be brought on record is the fact that the alleged impersonation of the wife of informant and the action taken by the learned Advocate. At the cost of repetition, we would like to say that the learned Advocate has taken that action after the complaint was lodged against him with the Bar Council of Maharashtra. The identity of the another lady is yet to be established and furthermore, the Court had further proceeded in the matter. As on today, the Civil Court had held that the summons has been duly served on the defendant therein. On these points, the application under Section 482 of the Code of Criminal Procedure cannot be rejected.

11. Now, turning towards the criminal writ petition filed by the informant as well as his application for production of documents, as regards production of documents is concerned, it is in respect of the production of the summons of Regular Civil Suit No.336 of 2018. Said copy of the summons bears the signature and also report of the bailiff. Therefore, there is *prima facie* thing before us. Even if that

production is allowed, it would be in respect of the other facts which were not pleaded in the FIR in question. When those documents are not connected with the facts in question i.e. FIR vide Crime No.25 of 2019, production of the documents is not necessary.

12. The charge-sheet is now already filed which we have already considered and, therefore, the prayer clause 'C' in Criminal Writ Petition No.266 of 2022 is become redundant. Another factor to be noted is that there are no pinpointed allegations against the police authorities. Merely because there was delay of one month in registering the FIR, the investigation cannot be handed over to another agency. One more aspect to be considered from the copy of the charge-sheet that has been made available that the investigation appears to have been done by PSI Yogita S. Kokate, as many statements under Section 161 of the Code of Criminal Procedure have been recorded by her. Respondent No.5 in criminal writ petition appears to be the in-charge police officer, but the charge-sheet is under the signature of said PSI Yogita Kokate. She has not been made party to the criminal writ petition and no allegations are made against her. On this count also, there is no substance in the prayer for handing over the investigation to any other agency. So also question of addition of Section 166 and 167 of the Indian Penal Code against the police authorities cannot arise. Such offence cannot be

included in vague, unless it is pointed out who has committed that offence. The contentions in the criminal writ petition are totally vague and, therefore, the said writ petition along with the application for production of document deserves to be rejected.

13. For the aforesaid reasons, we proceed to pass the following order :-

ORDER

I) Criminal Writ Petition No.420 of 2023 stands disposed of as withdrawn.

II) Criminal Application No.4436 of 2022 stands allowed.

III) The FIR bearing Crime No.25 of 2022 dated 28.01.2022 registered with Shirdi Police Station, Tq. Rahata, Dist. Ahmednagar for the offences punishable under Sections 454, 380, 427 read with Section 34 of Indian Penal Code as well as the proceedings bearing R.C.C. No.07 of 2023 pending before the learned Judicial Magistrate First Class, Rahata, Dist. Ahmednagar, stand quashed and set aside, as against the applicants in Criminal Application No.4436 of 2023.

IV) Criminal Writ Petition No.266 of 2022 with Criminal Application No.879 of 2023 stand rejected.

[Y. G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm