

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 898 OF 2022

- 1] Shri Mangesh Deepchand Laddha
Age – 35 years, Occu – Business
R/o – Badri Plot, Bhusawal,
Tal – Bhusawal, Dist. - Jalgaon
- 2] Shri Premraj Vithaldas Ladhe,
Age : 65 years, Occu : Agril & Business,
R/o Nandanwan Colony, Bhusawal,
Tal. Bhusawal, Dist. Jalgaon
- 3] Shri. Mahendra Shantilal Surana,
Age : 61 years, Occu : Agril & Business,
R/o : Gangaram Plot, Bhusawal,
Tal. Bhusawal, Dist. Jalgaon
- 4] Shri. Brijesh Radheshyam Lahoti,
Age : 35 years, Occu : Business,
R/o : Near Gayatri Shaktipith, Bhusawal,
Tal. Bhusawal, Dist. Jalgaon
- 5] Sau. Smita Rajesh Kakani
Age : 48 years, Occu : Household,
R/o : Varangaon, Tal. Bhusawal,
Dist. Jalgaon

.. Applicants

Versus

- 1] The State of Maharashtra,
Through Superintendent of Police,
Jalgaon, Tal & Dist. Jalgaon
- 2] Rajesh Gangadhar Joshi,
Age : 50 years, Occu – Business,
R/o – Hotel Arya Niwas, Modern Road,
Bhusawal, Tal – Bhusawal, Dist. - Jalgaon

.. Respondents

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Advocate for the applicants : Mr. P.R. Katneshwarkar

APP for the respondent – State : Mr. M.M. Nerlikar

Advocate for respondent no. 2 : Mr. Rajendra Deshmukh, Senior Advocate
i/by Mr. Devang R. Deshmukh

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**CORAM : MANGESH S. PATIL &
M. M. SATHAYE, JJ.**

DATE : 20 MARCH 2023

ORDER (MANGESH S. PATIL, J.):

We have heard the learned advocate for the applicants Mr. Katneshwarkar, Mr. Nerlikar, learned APP and learned Senior Advocate Mr. Rajendra Deshmukh for the respondent no. 2.

2. The applicants are seeking quashment of crime registered on the basis of the FIR no. 2 of 2022 of Bhusawal City Police Station, District - Jalgaon for the offences punishable under section 420, 467, 468, 471, 406 read with section 34 of the Indian Penal Code, lodged by the respondent no. 2. They are also seeking quashment of the chargesheet filed pursuant to the investigation carried out in that crime bearing R.C.C. no. 212 of 2022 pending on the file of the jurisdictional Magistrate.

3. The sum and substances of the allegations as can be discerned from the FIR and the police papers are to the effect that the respondent no. 2 along with his brother - Yogesh and other co-accused Vijay Bhagwan Patil and Subhash Bhagwan Patil had sold to the applicants a portion of land ademeasuring 1884 square meters out of Gat no. 1029 of village Talwel, Taluka - Bodwad, District - Jalgaon under a registered sale deed dated 02-07-2013. It was specifically

agreed that the remaining portion from that land to the extent of 2116 square meters or a portion thereof was being acquired for the road widening of a national highway. It was further agreed that the amount of compensation to be received in respect of the portion of land would be received by the executants of the sale deed i.e. the vendors. However, in spite of such a stipulation in the sale deed, the applicants indulged in manipulation and forging wherein the word 'देणार' (vendors) was overwritten so as to appear as 'घेणार' (purchasers) and on that basis the applicants claimed the compensation by using the forged document.

4. It is also alleged that even a forged and bogus document styled as '*Kararnama*' of the same date i.e. 02-07-2013 was used to lay a claim and to receive the compensation from the competent authority under the National Highways Act. It is alleged that after realizing the fact that the applicants had received the compensation illegally by indulging in forgery and cheating, the vendors approached the competent authority which after hearing both the sides has referred the dispute to the civil Court as contemplated under section 3-H(4) of the National Highways Act. It is also alleged that in view of the objection being raised by the vendors, the applicants deposited back the amount of compensation with the competent authority.

5. The learned advocate Mr. Katneshwarkar would submit that a purely civil dispute is being brought under the criminal law. Accepting that the word 'देणार' is overwritten as 'घेणार', the contemporaneous agreement of the same date executed on a stamp paper clearly demonstrates that it was executed by all the vendors which had executed the sale deed including the respondent no. 2. They had specifically agreed that the amount of compensation was to be received by the applicants and they were to execute the sale deed without receiving any additional consideration.

6. Mr. Katneshwarkar would further point out that the statement of the stamp vendor has also been recorded during the course of investigation who has specifically stated as to how in the same evening one of the vendors - Yogesh Joshi had come to him with a typed document of the sale deed wherein he could notice the overwriting and Yogesh Joshi having told him that it was done with the mutual consent at the time of registration of the sale deed. He has also specifically stated that in order to substantiate such alteration Yogesh purchased a stamp paper of Rs.100/- from him and as per his instructions, he typed the contents but inadvertently, because of the rush of work, he could not obtain signature of Yogesh Joshi on the stamp paper and the concerned register regarding sale of stamps. Mr. Katneshwarkar would also refer to the statement of the retired Naib

Tahsildar Mr. Chango Sitaram Kapse which according to him supports the applicants' claim.

7. Learned APP and the learned senior advocate Mr. Deshmukh would submit that a bare look at the copy of the sale deed (page no. 140) under which the applicant had purchased portion of the land shows that there is overwriting. The letter 'घे' is replaced in place of 'दे'. The agreement dated 02-07-2013 does not bear signature of the purchaser of the stamp - Yogesh. At this stage, the FIR and the statements of the witnesses are sufficient to demonstrate that there is a clear forgery and a claim for the compensation based on such forged document. This is not the stage to decipher the material. The prosecution deserves sufficient opportunity to substantiate the allegations by leading cogent evidence. At this juncture, no inference can be drawn merely because simultaneously it is a transaction of sale of immovable property. It does not preclude initiation of a criminal case if the circumstances are indicative and demonstrate commission of a crime.

8. We are alive to the limitations on the powers of this Court while exercising the jurisdiction under section 482 of the Code of Criminal Procedure. The powers are to be used sparingly and in rarest of rare cases, as has been consistently laid down by the Supreme Court.

9. At the outset, we are ready to proceed on the premise that the word 'घेणार' has been replaced by word 'देणार'. However, the circumstance will have to be considered in juxtaposition to the other material and circumstances available on the record pursuant to the investigation carried out by the Investigating Officer.

10. Apart from the fact that no statement of the competent authority under the National Highways Act who has disbursed the compensation to the applicants has been recorded by the Investigating Officer. Resultantly, the person on whom the alleged fraud has been practised by resorting to the forgery, is not coming forward to say that because of such deceit practised by the applicants much less dishonestly and fraudulently, he was made to pay the compensation. Rather, there is a statement of the then Naib Tahsildar from the office of the competent authority – Chango Sitaram Kapse who has specifically stated that after seeing the word 'देणार' having been written by hand in the sale deed, the contents of which were typewritten when he raised a query the applicant no. 1 produced the agreement of the same date on a stamp paper of Rs.100/- wherein, the vendors had agreed for the payment of compensation to the applicants.

11. It is, therefore, quite conspicuous that the sale deed with the alleged overwriting was not the only basis on which the applicants

were found entitled to receive the compensation. In addition, this agreement which is apparently a contemporaneous document was the basis to clarify such overwriting in the sale deed.

12. Conspicuously, the FIR and the statements of the other co-vendors Vijay Bhagwan Patil and Subhash Bhagwan Patil recorded under section 161 of the Code of Criminal Procedure merely allege that even this agreement is forged one. The assertion is that the co-vendor - Yogesh Joshi allegedly soon thereafter had purportedly purchased the stamp paper of Rs.100/- but the stamp paper does not bear his signature at the top at the specified place where signatures of the purchasers appear and even his signature was not to be found on the register maintained by the stamp vendor wherein entries are taken of the stamps sold. Conspicuously, this agreement bears signatures of all the four vendors at the bottom of the writing apart from the signatures of the purchasers and the two witnesses.

13. In spite of being aware of the fact that this agreement is the basis on which the applicants have been asserting the right to receive the compensation, the FIR as well as the statements of the vendors recorded under section 161 of the Code of Criminal Procedure conspicuously omit to dispute the signatures at the bottom of this agreement. It is not their allegation that even all these signatures are forged one. Only a vague allegation has been made that this

agreement is also a forged and bogus one, without making it specific and without giving particulars as to in what respect it is forged / bogus.

14. To repeat, it is only on the basis of absence of signature of Yogesh Joshi as the purchaser at the top of this agreement and in the register maintained by the stamp vendor – Pratap Anantrao Shinde that these allegations regarding the agreement being a forged and bogus are being levelled.

15. As is mentioned herein-above, the stamp vendor – Pratap Shinde in his statement under section 161 of the Code of Criminal Procedure has specifically stated that Yogesh Joshi himself had purchased the stamp and pointing out the sale deed explained the overwriting in the sale deed to have been made at the time of the registration with the consensus of both the sides. He has also stated that Yogesh Joshi purchased the stamp paper of Rs.100/- and at his instance, he typed the contents thereof but it is only because of the rush hours and since the business hours were getting closed that inadvertently the signature of Yogesh Joshi remained to be obtained at the top of the stamp paper and in the concerned register. If this version is to be accepted of this stamp vendor coupled with the fact that there are no specific allegations by the respondent no. 2 who is one of the vendors and even the other vendors disputing the signatures on this contemporaneous agreement, the allegations that even this agreement is forged and bogus are not sustainable.

16. There is one more circumstance which according to us corroborates the inference which we are drawing.

17. As can be seen from the police papers and as mentioned by the retired Naib Tahsildar – Chango Kapse the initial process for acquisition was initiated in the year 2011 and the notice to the vendors for receiving the compensation was issued on 25-09-2013 wherein names of all the 4 vendors can be found. It is not the version of any of these vendors about having responded to this notice and reached the office of the competent authority asserting their claim to receive the compensation. It is only the applicants who then approached the competent authority and as mentioned herein-above claimed the amount of compensation on the basis of the sale deed and the agreement dated 02-07-2013.

18. Again, as has been stated by Chango Kapse, retired Naib Tahsildar, another notice dated 14-10-2015 was also issued and it was addressed not only to all the 4 vendors including the respondent no. 2 but to the applicants as well. A copy of that notice which is a part of the chargesheet *ex facie* shows that the names of all these persons, vendors and purchasers appear at the top. On the reverse there are signatures acknowledging to have received the notice for and on behalf of all these vendors. This circumstance is indicative of the fact that even after receipt of this second notice in the year 2015, the vendors

had not approached the competent authority in response, asserting their right to receive the compensation.

19. It is only as late as in the year 2021 that the respondent no. 2 and the other vendors seem to have approached the competent authority putting up a claim. If at all the vendors had reserved right to receive the compensation while selling the land, their conduct in not claiming the compensation in spite of the initial notice of the year 2013 or even the subsequent notice of the year 2015 and raising the dispute as late as in the year 2021-2022 is enough to demonstrate that the dispute is of civil nature.

20. Much emphasis has been laid by the prosecution and Mr. Deshmukh for the respondent no. 2 on the fact that the applicants have subsequently refunded the amount of compensation, seeking to draw an inference that they realized the misdeed and tried to come out of the allegations regarding the crime. However, as has been mentioned by Chango Kapse, retired Naib Tahsildar, and as is apparent from the affidavit got executed from one of the purchasers and which forms a part of the chargesheet, the amount of compensation was paid to the applicants subject to the condition that if some dispute was raised subsequently, they would refund the amount of compensation. This circumstance clearly refutes the inference sought to be drawn by

the respondents that such refund of the amount is with some guilty mind.

21. Admittedly, no sooner the respondent no. 2 and the other co-vendors raised the dispute with the competent authority, after hearing both the sides by the order dated 23-11-2021 and resorting to the provisions of section 3-H(4) of the National Highways Act, the amount of compensation has been transmitted to the civil Court for decision in accordance with law.

22. In view of the afore-mentioned facts and circumstances, in our considered view, it is a clear case of civil dispute which is attempted to be presented as a crime. It would be a sheer abuse of the process of law to allow the applicants to face the charge. The case is squarely covered by the principles laid down in the matter of ***State of Haryana and others Vs. Ch. Bhajan Lal and others; AIR 1992 SC 604.***

23. We allow the application and quash and set aside the crime registered on the basis of the FIR no. 2 of 2022 of Bhusawal City Police Station, District - Jalgaon for the offences punishable under section 420, 467, 468, 471, 406 read with section 34 of the Indian Penal Code and the consequent chargesheet leading to registration of R.C.C. no. 212 of 2022 pending on the file of the Civil Judge Senior Division, Bhusawal.

24. It is clarified that the observations made herein-above are confined to the decision of the present application and the civil Court shall not feel influenced by those.

[M. M. SATHAYE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/