

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

65 CRIMINAL APPLICATION NO. 936 OF 2022

Rupesh Eknath Shinde
Age: 37 Years, Occu: Service,
R/o: Walwane, Tq. Parner,
Dist: Ahmednagar.

... Applicant
(Ori. Accused)

Versus

1. The State of Maharashtra
Through Police Inspector,
Police Station Parner, Tq. Parner,
District: Ahmednagar.

2. Chandrakant s/o Vitthal Kamathe
Age: 66 Years, Occu: Business,
R/o: Shramsafalya Niwas,
Near Ganesh Mandir,
Bholenath Chawk, Kondhwa Br.,
Tq. Haweli, Dist. Pune.

... Respondents
(R.No.2 Orig. Complainant)

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Advocate for Applicant : Ms. Manjushri V. Narwade
APP for Respondent No.1-State : Mrs. M. A. Deshpande
Advocate for Respondent No.2 : Ms. N. V. Mirajkar h/f
Mr. M. V. Thorat (appointed)
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**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

DATED : 10 APRIL 2023

PER COURT :-

1. Heard both sides finally.

2. The applicant, who is one of the eight accused, precisely accused no.8 in crime no.1007/2020 registered with Parner Police Station, District Ahmednagar for the offences punishable under Sections 419, 420, 465, 467, 468, 471 r/w 34 of the Indian Penal Code (IPC) and the subsequent charge sheet and the criminal case pending in the court of the Magistrate, is seeking quashment by invoking the powers of this Court under Section 482 of the Code of Criminal Procedure (Cr.P.C.).

3. The sum and substance of the allegations as can be discerned from the FIR and the papers of investigation, which now form part of the charge sheet, are to the effect that respondent no.2, who claims to be the owner of the property, realized that without he having ever entered into any transaction in respect of his land, its revenue record was mutated. It was revealed that by indulging in forgery and by resorting to impersonation, the accused persons managed to sell his property to the purchasers by name Pipada.

4. Since none of other accused are before us, we had called upon the learned APP to take us through the charge sheet and to point out as to what exactly is the role attributable to the present applicant. Based on the police papers, she informs us that though name of the

applicant is not appearing either in the FIR or the statements of any other witnesses, in the supplementary statement of Pipada, it was revealed that even the present applicant had helped the other accused in commission of the crime. The police report received by her mentions that even he had indulged in preparing the bogus documents and had received an amount of Rs.22,00,000/- for that purpose. She would also point out that several telephonic conversations had taken place between accused no.3 and the present applicant during the relevant time.

5. As is cursorily mentioned hereinabove, it is a matter of impersonation and execution of a sale deed by an impostor. The rest of the accused are alleged to have indulged in such forgery and cheating, thereby enabling the land of respondent no.2 to be sold to the purchasers i.e. Pipadas by a registered sale deed. Taking into account the *modus* resorted by the accused persons, it becomes imperative for us to ascertain as to what role is attributable to the present applicant.

6. So far as the alleged telephonic conversation between the applicant on the one hand and one of the accused on the other at the relevant time, in the absence of anything on the record to

demonstrate what was the nature of conversation between the two, that circumstance *per se* cannot be said to be relevant for discerning the complicity of the applicant in the crime.

7. Again, though the written report received by learned APP, on the basis of which she is making statements, mentions about the applicant having taken part in preparation of false documents and receiving money, except such bald statement in the report, there is absolutely no material annexed to the charge sheet to corroborate this allegation. Not an iota of substance could be gathered by the Investigating Officer to ascertain as to in what manner the applicant had taken part in preparation of false documents. There is no material to show that he was present when the document was being prepared, registered with the office of the Sub-Registrar or at the time of receiving money. Conspicuously, it is in the supplementary statement of the purchaser Pipada, for the first time, he vaguely mentioned that even the applicant was involved and had helped in commission of the crime, without giving the particulars and without even vaguely referring as to how these witnesses could identify the applicant with some role in the crime.

8. We know that the powers of this Court in quashing a crime are circumscribed by law as laid down in catena of judgments of the Supreme Court including *Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.*; (2007) 12 Supreme Court Cases 1 and *Mahendra K.C. Vs. State of Karnataka and Another*; (2022) 2 Supreme Court Cases 129.

9. But then, in an appropriate case, like the present one, in spite of complexity of the crime and its *modus*, the Investigating Officer has not been able to collect any material which would demonstrate involvement of the applicant in commission of the crime in some part at least. His name does not appear in the FIR. There are no witnesses vouching for his presence during the course of the deliberations or the transaction or while receiving money or while presenting the document for registration. In the absence of iota of material, merely on the basis of suspicion which is also not based on any tangible material, in our considered view, it would be abuse of the process of law if the applicant is made to face the prosecution. Allowing the trial to go on against him would be an exercise in futility to his extent. Case is squarely covered by the parameters laid down in the matter of *State of Haryana & ors v. Ch. Bhajan Lal* ; 1992 SCC (Cri) 426/AIR 1992 SC 604.

10. The application is allowed. Crime No.1007 of 2020 registered with Parner Police Station, Taluka Parner, District Ahmednagar for the offences punishable under Sections 419, 420, 465, 467, 468, 471 r/w 34 of IPC and the charge sheet and criminal case bearing RCC No.192 of 2021 pending on the file of Judicial Magistrate First Class, Parner are quashed and set aside to the extent of the present applicant only.

11. Mr. M. V. Thorat was appointed to represent respondent no.2. We quantify his fees at Rs.3,000/-.

[ABHAY S. WAGHWASE, J.]

[MANGESH S. PATIL, J.]

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