IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

140 CRIMINAL APPLICATION NO.1293 OF 2021

1. Jagannath Gorakshanath Dhasal,
2. Harishchandra Vijay Deshpande
3. Sandip Kisan Tarte ...Applicants

versus

1. The State of Maharashtra
2. Omprakash Dubey ...Respondents

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Advocate for Applicants : Mr. P.R. Katneshwarkar h/f Mr. Shashikiran N. Patil
APP for Respondent No.1: Mr. R.V. Dasalkar
Advocate for Respondent No.2 : Mr. S.V. Adwant

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CORAM : R. G. AVACHAT AND SANJAY A. DESHMUKH, JJ.
DATED : 11th SEPTEMBER, 2023.

PER COURT :-

Heard.

2. This application has been moved for quashing of the F.I.R. No. 0243 of 2021 registered with Tophkhana police station, Ahmednagar for the offences punishable under Sections 420, 465, 466, 468, 471 and 34 of I.P.C.

3. The applicants before us are the revenue officials, (two Talathis and one Circle Officer). The facts in nutshell are as follows:-

The first information report (F.I.R.) has been lodged by the Branch Manager of Bank of Maharashtra, Branch Savedi, Ahmednagar. The co-accused (i) Ashok Madanlal Mawal, (ii) Pankaj Ashok Mawal and (iii) Bharat Ashok Mawal availed bank loan of Rs.1.00 Crore way back in March, 2013. In all six properties (assessed to N.A.) were given as security towards repayment of the loans and equitable mortgage/s was/were executed. We are not much concerned with the loan transaction between the bank and the borrowers. The applicants herein are alleged to have been hand in gloves with the borrowers in fabricating/forging no dues certificates on the basis of which an entry of mortgage encumbrance appearing in the 7x12 extract of the land, came to be deleted without giving prior notice to the bank. This the only ground on which the bank claims to have reason to allege the applicants to have been accomplice.

4. The learned advocate for respondent bank adverted our attention to the last para of F.I.R wherein the present applicants are alleged to have conspired with the main borrowers with an intention to cause loss of the security. Fortunately, the borrowers did not create third party interest in respect of the security post the present applicants deleted entry of encumbrance from the revenue record. According to the learned advocate, such act of the applicants are intolerable. According to him, the dues are little over Seven Crores Rupees. He therefore urged for rejection of the application.

5. The learned A.P.P. would submit that the competent authority has refused to accord sanction for prosecution of the applicants/Talathis. It is not known as to what the State has proposed to do for prosecuting the Circle Officer. According to the learned A.P.P., the investigating officer still proposes to file charge sheet against all the applicants. According to him, the applicants ought to have given notice to the bank before effecting the mutation entry deleting encumbrance from 7x12 extract, which itself is sufficient to indicate that the applicants and the borrowers to have been in concert in committing the alleged crime. He therefore urged for rejection of the application.

6. Considered the submissions advanced. Perused the F.I.R. and the papers of investigation relied upon. Admittedly, the Sub Divisional Officer has refused to accord sanction for prosecution of the applicants/Talathis. Be that as it may. The borrowers availed loan of Rs.1.00 Crores on 28.3.2013 and went on availing further loans as against the same securities and as such the total outstanding amount is now swelled to little over to Rs.7.00 Crores. Six plots (assessed to N.A.) were given as security for repayment of the loan amount. According to the prosecution, a letter dated 21.8.2020 is forged and fabricated document. Admittedly, the same was presented by one of the borrowers to the Talathi (one of the applicants) for releasing the mortgaged property. The applicants were expected to follow the procedure under Section 150 of the

Maharashtra Land Revenue Code, 1966 before effecting the mutation entry in that regard. The learned advocate for the applicants relied on the panchnama drawn by the applicants suggesting that the notice of the proposed mutation was published on the notice board of Chavdi. Explanation thereto is sought to be offered contending that those were the days of Covid Pandemic and therefore, no personal notice to the bank was issued. These grounds are unacceptable.

7. The fact however, remains that the applicants-Talathis effected mutation entry based on so called forged/fabricated letter dated 21.8.2020. The Circle Officer (one of the applicants) certified the mutation. As such, entry of encumbrance came to be deleted from the revenue record of the properties mortgaged as security for repayment of the loan. Fortunately, the borrowers did not create third party interest thereafter. It has been brought to our notice that when the bank realized the entry of the encumbrance to have been deleted from 7x12 extract, it immediately approached the Tahsildar concerned and entry of encumbrance has now been restored in the revenue record.

8. It appears the present applicants to have been grossly negligent in discharging their duties. There is nothing to indicate the applicants to have conspired with the borrowers in playing the alleged mischief. It is reiterated that the competent authority has refused to accord sanction for prosecution of the Talathis. It is true that the said

question cannot be gone into at this stage. The fact however remains that entry of encumbrance that was illegally deleted from the revenue record by the present applicants has now been restored and the bank has not suffered any monetary loss thereby. It is informed, due to the pendency of this matter, promotions of the applicants have been withheld.

9. In the aforesaid factual backdrops and particularly in the interest of justice, we propose to exercise the jurisdiction under Section 482 of Cr.P.C. to allow the present application.

10. In the result, criminal application is allowed in terms of prayer clause "B".

(SANJAY A. DESHMUKH, J.) **(R. G. AVACHAT, J.)**

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