

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2038 OF 2022

**SANJAY SUGANCHAND KASLIWAL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. A.P. Bhandari, Advocate for the applicant
Mr. M. M. Nerlikar, APP for the respondent/State
Mr. N. T. Tribhuwan, Advocate for respondent No. 2.

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R. M. JOSHI, JJ.**

DATE : 31ST JANUARY, 2023

PER COURT :-

1. At the outset learned counsel for the applicant seeks leave to amend the prayer clause 'B'. Leave granted. Amendment to be carried out forthwith.
2. With consent, heard finally at the stage of admission.
3. This is an application under Section 482 of Cr.P.C. to quash the first information report No. I-342/2017 registered with City Chowk Police Station, Dist. Aurangabad and R.C.C. No. 2020/2018 pending before the JMFC, Aurangabad for the offences punishable under Sections 406, 420, 465, 467, 468 and 471 of the Indian Penal Code.

4. Before advertizing to the facts, it would be relevant to the note that Section 482 of the Code of Criminal Procedure confers inherent powers on the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The Hon'ble Supreme Court in State of Haryana and Others vs. Ch. Bhajan Lal and others reported in AIR 1992 Supreme Court Cases 335 has laid down the guidelines that must be adhered to while exercising its inherent powers under Section 482 of the Code of Criminal Procedure to quash the First Information Report. The relevant paragraph reads thus:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

5. In the instant case the aforestated crime was registered pursuant to the first information report lodged by the respondent No.2- Sanjay Prike, the Branch Manager of Malkapur Urban Co.Op. Bank Ltd. The first information report indicates that the applicant herein had availed cash credit facility to the extent of Rs. 4 Crores and had mortgaged two plots i.e. plot No.1 and 16 from survey Gut No. 74 of village Satara, Tal. and Dist. Aurangabad as security. The applicant had also executed a mortgaged deed in respect of the said two plots. It is stated that in the course of proceedings filed before the Debt Recovery Tribunal, the bank realized that the applicant herein had put up construction over the said plot and had already sold the apartments to

several persons. It was in these circumstances the FIR came to be lodged against the applicant.

6. Learned counsel for the applicant submits that this is a case of breach of contract. It is further stated that the two plots viz. plot No.1 and 16 from Gut No. 74, purchased by the applicant by sale deed dated 03/12/2009 have been mortgaged to the Bank by mortgage deed dated 11th January, 2013. According to him till date the applicant has not obtained construction permission, he has neither transferred the said plots to any other person, nor raised any construction over it.

7. The mortgage deed indicates that both these plots, which were mortgaged in favour of the bank were open plots. The measurement map as well as the statement of Duryodhan Namdeo Gawai prima facie reveals that the applicant herein has already constructed buildings over the said plots which were mortgaged in favour of the bank. It is on record that the apartments in the said buildings have been sold to several persons. It is to be noted the the said plots were mortgage as a security of cash credit facility of Rs. 4 Crores. It is stated that as on date the outstanding dues or liabilities is to tune of Rs.7,15,00,000/-. We are unable to accept the contention of the learned counsel for the applicant that this is merely a breach of contractual

terms. In our considered view, the first information report as well as the other material on record *prima facie* discloses offence of cheating as well as criminal breach of trust.

8. Learned counsel for the applicant states that the Bank has already made a statement before the recovery tribunal that they have taken possession of property which was mortgaged by the applicant. As noted above the mortgage was in respect of an open plot of land taking possession of the land with building which are already sold to different persons and over which third party rights have been created would not absolve the applicant from criminal liability.

9. It may be noted that the Court cannot conduct a roving inquiry or a mini trial, in exercise of powers under Section 482 of the Cr.P.C. The High Court cannot get into appreciation or marshaling the material on record nor can it adjudicate upon the correctness of the allegations. The only consideration is whether the contents of the FIR and the other material collected in the course of the investigation and which forms part of the charge-sheet, at it stands, *prima facie* establishes the essential ingredients of the offence. Having considered the material in its entirety, in our considered view the FIR and the other material *prima facie* disclosed the alleged offence. Hence this is not a fit case to exercise

discretion in favour of the applicant. Under the circumstances, the application is dismissed.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

ssp