

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

CRIMINAL APPLICATION NO.2853 OF 2019

**MANOJ S/O. KARTARSING CHAWLA AND ANR
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

Mr. R. R. Karpe, Advocate for the applicants
Mr. M. M. Nerlikar, APP for the respondent/State
Mr. G. R. Syed, Advocate for respondent No.2.

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

DATE : 20th JANUARY, 2023

PER COURT :-

1. With consent, heard learned for the applicants, learned APP for the respondent/State and learned counsel for respondent No. 2, finally at the stage of admission.

2. This is an application under Section 482 of the Code of Criminal Procedure for quashing the first information report bearing C.R. No. 0829 of 2019 registered with Tofkhana Police Station, Ahmednagar and R.C.C. No. 38 of 2021 pending before the JMFC, Ahmednagar for the offences punishable under Sections 420, 465, 468, 471 read with Section 34 of the Indian Penal Code.

3. We have perused the records and considered the submissions

advanced by learned counsel for the respective parties.

4. Short points following are our consideration whether the first information report and the other material collected in the course of the investigation *prima facie* disclosed offence as alleged against these applicants.

5. The record indicates that one Shivaji Miskin and his sister Rukhminibai had sold plot No. 263 (73) 74 at Miskin Nagar, Ahmednagar to Kartarsing, the father of the applicants and respondent No.2. Said Kartarsing expired in year 1989. The parties entered into a family settlement and executed a deed of relinquishment dated 28th November, 2011. The mother of the applicants and respondent No.2 relinquished gut No. 173 hissa No. 1+2+3/4 ad measuring 1 H 21 R and the right of part one in favour of the respondent No.2 whereas the respondent No.2 relinquished his rights in plot No. 263 (73) 74 in favour of his mother Anita and the applicants herein. Anita, the mother of the applicants and respondent No.2 expired on 6th January, 2015. After the demise of said Anita the applicant No.1 executed an affidavit dated 15th July, 2015 before the Revenue Authority stating that he and the co-applicant are only legal representatives of said Anita. Based on the said statement made by the applicants the mutation entry in respect of share of Anita

was made in favour these applicants. It is stated that the applicants thereafter sold a portion of the said property in favour of a third party.

6. The respondent No.2 filed the first information report stating that after the demise of Anita all children were entitled for her share. It is stated that applicants filed a false affidavit claiming to be the sole heirs and it is on the basis of the false affidavit they got a mutation entry effected in their favour and further sold the portion of the property and thereby caused wrongful loss to the respondent.

7. It is not in dispute that Anita died leaving behind her, the applicants, respondent No.2 and her daughter as legal heirs. Hence apart from the applicants the respondent No.2 as well as the Kanchan, the sister of the applicants and respondent No.2 were the legal heirs of Anita and were entitled to equal share in the property of the deceased. A perusal of affidavit dated 15th July, 2015 reveals that the applicants had stated that apart from these two applicants there was no other legal representatives of Anita. It is also stated that in the affidavit that there is no civil dispute in respect of a plot under survey No. 263(72)73 and 263(74) when it is not in dispute that second appeal filed by the original owner against the legal representatives of Kartarsing is pending before this court. Hence *prima face* applicants have got the mutation entries

effected in their names by making false affidavit and subsequently sold the property to the exclusion of the respondent No.2 and thereby caused wrongful loss to the respondent No.2. The FIR prima facie reveals commission of cognizable offence as alleged. Hence in our considered view, this is not a case which warrants interference in exercise of power sunder Section 482 of Cr.P.C. Hence the application stands dismissed. Suffice it is to say that the criminal case which pending before the Trial Court shall be decided on its own merits without being influenced by any of the observation made by this Court.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

ssp