

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

53 CRIMINAL WRIT PETITION NO.1474 OF 2022

**ANAND VASANTLAL SAMBRE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. Vishnu B. Madan Patil, Advocate for the petitioners
Mr. Tabrezuddin R. Quadri, Advocate h/f Mr. M. N. Sayyed,
Advocate for the respondent Nos. 2
Mr. D. S. Jape, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 10th APRIL, 2023

P. C.

1. After hearing the learned advocates for the parties it is seen that the learned JMFC, Jalna by order dated 02-02-2021 has issued process against the accused persons. The report was called under Section 202 and thereon process was issued against accused persons.

2. Said order was challenged by the accused persons by filing criminal revision. The learned Additional Sessions Judge, Jalna by order dated 02-08-2022 dismissed the criminal revision

by holding that the order was rightly passed by the following procedure and after calling for report under Section 202 of the Cr. P. C. It is the submission of the learned advocate for the petitioner that they are only purchasers of the land in question. They purchased the land by sale deed dated 30-07-2020 from respondent No. 3 i.e. accused No.1 and on the date of sale deed the property stood in the name of respondent No. 3 only. The land that was sold in the land from CTS No. 10768 to the extent of 105.5 sq. mts. including some old constructed area. He submits that even before purchase of property he had given a paper proclamation on 02-03-2020. No objection was received. Thus, he had verified title of respondent No. 3 and it is only thereafter the petitioners have purchased the land.

3. He further submits that already a civil disputes are pending between the complainant i.e. respondent No. 2 and other accused persons in respect of amount. Therefore it is only a civil dispute which is given a criminal colour and prays for quashing and setting aside the impugned judgment and

consequently the order of issuance of process.

4. Learned advocate for respondent No.2 original complainant vehemently opposes the petition by submitting that the learned Magistrate has passed order and called report under Section 202 and it is only after receipt of the report from the police, the order of issuance of process was passed. No illegality is thus committed by any of the courts. His further submission is that merely because there appears to be a civil dispute pending between the parties is not a reason to quash the criminal proceeding where the allegations made in the complaint making offences against accused persons. In this case, he submits that the present petitioners are ultimately beneficiaries of the transaction in the complaint. There are sufficient averments made against them. As they had knowledge of all the disputes pending between the parties. The main allegation is that the accused No.1 posed herself as Indirabai Jadhav who was dead person.

5. Learned advocate for the petitioners relied upon the judgment of the Hon'ble Apex Court reported in (2009) 14 SCC 696 in the case of Dilip Kumar and Others Vs Jagnar Singh and another wherein the Hon'ble Apex court has held that if the allegations made in the FIR do not disclose the commission of alleged offence and when the dispute is only of civil in nature then the FIR is liable to be quashed.

6. Learned advocate for the respondent relied upon the judgment reported in (2015) 3 SCC 424 in the case of Sonu Gupta Vs Deepak Gupta and Others and another judgment reported in (2019) 14 SCC 350 in the case of Kamal Shivaji Pokarnekar Vs State of Maharashtra and others wherein in both the cases it is held that at the stage of taking cognizance of the complaint the learned Magistrate has to consider only the material before him and has to apply judicial mind. The learned Magistrate at this stage is not required to consider the defence and other material or arguments. It is further held that merely because the allegations appears to be of a civil nature by itself is

no ground to quash order of issuance of process. If the ingredients of the offences alleged against accused are prima facie made out. Considering this judgment, this court finds that in the present case learned Magistrate has applied his mind and has issued process after calling the report. The learned Sessions Court has also rightly considered the matter. This court does not find any illegality committed by any of the proceeding. This court thus does not find any reason to cause interference in the writ petition under Article 227 of the Constitution of India. Hence, the following order.

ORDER

- a] Criminal writ petition stands dismissed.
- b] Learned advocate for the petitioners at this stage submits that since there was already interim protection granted by this court in their favour same be continued for further period of four weeks. Considering that the interim protection is already standing in their favour, same be continued for a period of four weeks from today.

[KISHORE C. SANT, J.]