



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3255 OF 2021

1. Sukhdev Balaji Sontakke
(withdrawn)
 2. Mahendra Murlidhar Hawale
 3. Murlidhar Shanakar Hawale
- ..Applicants

Vs.

The State of Maharashtra and anr. ..Respondents

Mr.A.H.Dhupe, Advocate for applicants
Mr.N.D.Batule, APP for respondent no.1
Mr.H.V.Tungar, Advocate for respondent no.2

CORAM : R.G.AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATE : DECEMBER 15, 2023

ORDER :-

By this application under Section 482 of the Code of Criminal Procedure, the applicants pray for quashment of the FIR, being Crime No.0447 of 2020, registered with Shivaji Nagar Police Station, Dist. Beed, for the offences punishable under Sections 420, 465, 468, 469 and 471 read with Section 34 of Indian Penal Code and the proceedings in R.C.C. No.445 of 2021, pending before Chief Judicial Magistrate, Beed.

2. Learned counsel for the applicants, on instructions, seeks withdrawal of applicant no.1 – Sukhdev. The application of applicant no.1 – Sukhdev, as such, stands disposed of as withdrawn.

3. What can be gathered from the First Information Report (FIR) and related papers is that the land in gut nos.575 and 578 was the subject-matter of the Civil Suit, being R.C.S. No.488 of 2012. It is alleged that applicant – Sukhdev and three others had filed a suit for declaration of ownership and perpetual injunction. Said suit was dismissed, meaning thereby the plaintiffs in the suit including present applicant – Sukhdev were held to be not owners of the suit land. They preferred first appeal against the judgment and decree passed in the suit. It appears that the appeal was dismissed in default. The application preferred for restoration of the appeal was also turned down. It is informed that applicant – Sukhdev and others, who had filed the suit, were also unsuccessful in the Second Appeal. As such, the decree passed in R.C.S. No.488 of 2012 attained finality holding Sukhdev and others three to be not owners of the land gut nos.575 and 578.

4. It is the case of the informant – Ajit that he along with his father was defendant in the said suit. Dismissal of the suit

impliedly suggest the trial court to have held the defendants to be owners of the suit land. In spite of the same, some part of the said land came to be sold to applicant – Mahendra Murlidhar Hawale. True, Sukhdev did not execute the sale deed. He is, however, attesting witness to the sale deeds. The legal position is that the attesting witnesses is not supposed to know the contents of the document. However, the fact indicates that Sukhdev, being party to the suit, knew the court held him and other plaintiffs to have no title to the suit lands. Still, he signed the sale deeds as attesting witness. Same indicates his complicity in the alleged crime. Learned counsel, therefore, has rightly withdrawn the application of applicant – Sukhdev.

5. As regards other applicant namely, Murlidhar Shankar Hawale, he is an attesting witness. There is prima facie nothing to indicate that he was in the know of the fact of filing of the suit, decision therein and the other proceedings. It is reiterated that the attesting witness is not supposed to know the contents of the documents he attested to. His role is only to identify the signatures of the parties to the document and nothing more. In view of the same, we are inclined to allow his application in spite of there being

strong objection of behalf of learned APP and learned counsel for respondent no.2 – informant.

6. So far as applicant - Mahendra Murlidhar Hawale is concerned, he has purchased the suit land. It is the common knowledge that it is the purchaser, who ordinarily spends for stamp duty and registration fee. The record indicates that a sum of little over Rs.30,000/- has been paid towards stamp duty and registration fee. We have to assume that the said expenditure must have been borne by Mahendra. He is residing in neighbouring village, which is 40 kms. away from the village of the informant. There is nothing to indicate that he was in the know of all the facts when he purchased the lands of which the vendor did not have title to transfer. Necessarily, he becomes the victim. Some recitals of the sale deed have been brought to our notice by learned counsel for the informant to indicate that this purchaser had verified the title of the land and the vendor had assured to have clear title thereto. He would also submit that the consideration amount has been paid in cash. He meant to say that the amount might not have changed hands and only with a view to defraud the owners, the sale deed might have been executed.

7. In our view, when the purchaser spends not less than Rs.30,000/- for purchase of the lands without verifying the title of the vendors, it is he who is at receiving end. Needless to mention, he may not get title of the suit land from the vendor who did not have title to transfer the same. We did not come across any material to indicate that he is privy to the offence in question. We are, therefore, inclined to allow his application also.

8. In view of the above, the application of applicant nos.2 and 3, namely, Mahendra Murlidhar Hawale and Murlidhar Shanakar Hawale is allowed in terms of prayer clause (B).

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP