

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

CRIMINAL APPLICATION NO. 4338 OF 2022

Monika Prashant Patil

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....
Mr. N.R. Shaikh, Advocate for applicant

Mrs. V.N. Patil-Jadhav, A.P.P. for respondent no.1 - State

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

DATE : 09th JANUARY, 2023

PER COURT :

1. This is an application under Section 482 of the Code of Criminal Procedure for quashing of F.I.R. bearing C.R. No. 296 of 2022 registered with Chalisgaon Police Station, Dist. Jalgaon for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

2. Learned counsel for the applicant states that the applicant herein, who is the wife of co-accused – Prashant Patil, is not involved in the said transaction. She has neither induced the complainant in entering into the said transaction nor has she executed the said sale-deed. He submits that the F.I.R., even if taken at its face value, does not disclose any offence as against this applicant. He contends that the case of the applicant is squarely covered

by clause 1 and 3 of the judgment in ***State of Haryana and Others Vs. Ch. Bhajan Lal and Others, 1992 AIR 604***. He further states that the co-accused – Prashant Patil had already issued a notice to the complainant wherein it is specifically claimed that the money was received by him as hand loan and that to sale transaction is bogus. He submits that the complainant is a moneylender and that the complainant had abused the co-accused and his family members and that N.C. complaint was lodged against him for the offence punishable under Sections 504 and 506 of the I.P.C. He has relied on the decision of the Apex Court in the case of ***Rekha Jain Vs. State of Karnataka and Another, 2022 AIR SC 2268*** and ***Ramesh Chandra Gupta Vs. State of U.P. and Others, 2022 (4) Crimes 573***.

3. We have perused the records and considered the submissions advanced by learned counsel for the respective parties. The scope and ambit of Section 482 of the Cr.P.C. is well settled in case of Bhajan Lal (cited supra). The guidelines inter alia provide that (1) the F.I.R. can be quashed when the allegations made in the F.I.R. 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 a case against the accused. (3) Where uncontroverted allegations made in the F.I.R. 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. In ***Inder Mohan Goswami Vs. State of Uttaranchal, (2007) 12 SCC 1***, it is held by Hon'ble Apex Court that inherent jurisdiction though wide has to be exercised sparingly, carefully and with great caution and it may be exercised to give effect to an order under the Code, to prevent abuse of process of Court and to otherwise secure ends of justice. It is further held that said power should not be exercised to stifle a legitimate prosecution.

5. In ***Munshiram Vs. State of Rajasthan, (2018) 5 SCC 678***, it is observed that "*it is no more res integra that Section 482 Cr.P.C. has to be utilized cautiously while quashing F.I.R. This Court in a catena of cases has quashed F.I.R. only after it comes to a conclusion that continuing investigation in such cases would only amount to abuse of the process.*" Similarly, in ***Teeja Devi Vs. State of Rajasthan, (2014) 15 SCC 221***, held thus, "*It has been rightly submitted by learned counsel for appellant that ordinarily power under Section 482 Cr.P.C. should not be used to quash F.I.R. because that amounts to interfering with statutory power of police to investigate a cognisable offence and it can be done in rarest of rare cases where the Court is satisfied that the prosecution is malicious and vexatious.*"

6. In the instant case, crime against the applicant and her husband has been registered pursuant to the F.I.R. lodged by Respondent No.2. The complainant has alleged that in the year 2019 he retired from the Armed

Forces and that presently he is engaged in agricultural business. He states that his friend, Kishor Dagadu Erande was also serving in Armed Forces. He states that the co-accused – Prashant Patil, husband of the applicant herein, resident of same village, was known to him and in December 2020 one of the villagers Dagadu Ganpat Deore informed him that Prashant Patil was interested in selling his residential house situated at Kharjai Road, Rajmata Jijau Nagar, Takali and asked the complainant whether he was interested in purchasing the said house. The complainant states that in December 2020 he and Kishor Erande went to see the house which was put up for sale. He has stated that co-accused – Prashant Patil was present alongwith his family members including the present applicant. Upon negotiation, said Prashant Patil agreed to sell his house for Rs.16.80 lakhs. He has stated that the applicant as well as the parents of Prashant Patil had consented for sell of the said house. The complainant paid total amount of Rs.16.80 lakhs to Prashant Patil from time to time. Prashant Patil executed the sale-deed on 01st April, 2021 which was signed by the applicant and Nivrutti Shravan Erande as witnesses.

7. The complainant has alleged that despite execution of the sale-deed, said Prashant Patil did not give possession of the subject house or the alternative premises as agreed on the pretext of outbreak of COVID 19 pandemic. He has stated that co-accused Prashant Patil thereafter executed

an agreement agreeing to pay to the complainant an amount of Rs.3,500/- per month towards rent, till possession of the subject house was given. The complainant has alleged that the co-accused did not hand over possession of the subject house nor paid the rent as agreed. The complainant was subsequently informed by the father of the co-accused – Prashant Patil that the co-accused Prashant Patil and his wife i.e. the applicant herein had availed loan of Rs.17 lakhs from HDFC Bank, Nashik and had taken home insurance loan of Rs.1,54,990/- and as such they would not deliver possession of the subject house. Upon enquiry, the complainant learnt that the co-accused – Prashant Patil and the applicant herein had taken loan against the said subject house and that they have not repaid the said loan and the outstanding dues were Rs.18,54,990/-. The complainant, therefore, lodged the F.I.R., based on which crime has been registered against the applicant and her husband for offence under Section 420 read with 34 I.P.C.

8. The F.I.R. prima facie reveals that Prashant, husband of the applicant had entered into a registered sale-deed with the complainant for sale of the house and received sale consideration of Rs.16.80 lakhs without disclosing the fact that he and his wife i.e. the applicant have had already mortgaged the house to the bank.. The applicant undisputedly is a signatory to the said sale-deed as a witness. The F.I.R. prima facie reveals that the applicant and her husband had already availed loan from HDFC Bank by

mortgaging the subject house. They had not repaid the loan and in view of the charge created by mortgage, possession of the house was not handed over to the applicant. Under these circumstances, the husband of the applicant had agreed to provide alternative premises and entered into a leave and licence agreement with Respondent No. 2 - complainant. The applicant is a witness to the said agreement. Though the applicant is not a party to the sale deed, she was aware of the sale transaction. She had consented for the sale and signed the sale-deed as a witness. It is under these circumstances Section 34 I.P.C. has been applied. The F.I.R. prima facie demonstrates her participation and involvement in the said crime. In view of this distinguishing factor, the decisions relied upon by learned counsel for the applicant are not relevant to decide this application. The defence that Respondent No.2 is a moneylender or that he had given money as hand loan cannot be considered or appreciated in these proceedings under Section 482 Cr.P.C.

9. The F.I.R. prima facie discloses offences as alleged. Interference with investigation, which is at preliminary stage, is totally uncalled for. Under the circumstances the application is dismissed.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

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