

Jose/Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.55 OF 2022

1. MR. JIT VINAYAK AROLKAR,
son of Mr. Vinayak Arolkar,
aged about 40 years, married,
Indian National,
residing at H. No. 132,
Shirgal, Dhargal, Pernem, Goa.

... Petitioner.

Versus

1. STATE OF GOA
through the Public Prosecutor,
High Court, Porvorim, Goa.

2. THE POLICE INSPECTOR,
Economic Offences Cell,
Altinho Panaji Goa.

3. THE POLICE INSPECTOR,
Pernem Police Station,
Pernem, Goa.

4. SHRI RAWLOO VAIKUNTH KHALAP
alias RAULU VOICUNTA COLOPO
through his Power of Attorney
SMT. SANDHYA PUSHPASHIL BANDEKAR
r/o H. No.126, HB-447, "Arun Niwas"
Dattawadi, Mapusa, Bardez-Goa.

[Amendment carried
out in terms of order
dated 04.08.2022
sd/-]

... Respondents.

**Mr S.S. Katak, Senior Advocate with Mr Abhijeet Gosavi and
Ms Neha Kholkar, Advocates for the Petitioner.**

Mr Pravin Faldessai, Additional Public Prosecutor for the State.

**Mr Arun de Sa with Mr J.J. Mulgaonkar and Mr Sahil
Sardessai, Advocates for Respondent No.4.**

CORAM: M.S. SONAK, J &
BHARAT P. DESHPANDE, J.
RESERVED ON: 27 February, 2023
PRONOUNCED ON: 1 March, 2023

JUDGMENT: *(Per Bharat P. Deshpande, J.)*

Rule. Rule is made returnable forthwith. With consent of the learned Counsel appearing for the parties, this matter was taken up for final disposal at the stage of admission.

2. Heard learned Senior Counsel Mr S.S. Kantak appearing with learned Counsel Mr Abhijeet Gosavi and Ms Neha Kholkar for the Petitioner, learned Additional Public Prosecutor Mr Pravin Faldessai for the State and learned Counsel Mr Arun de Sa, Mr J.J. Mulgaonkar and Mr Sahil Sardesai for Respondent No.4.

3. The Petitioner is praying for quashing of FIR No.177/2020 initially registered at Pernem Police Station on 26.10.2020 and now transferred to Special Investigation Team of the Economic Offences Cell, on the ground that the FIR nowhere disclosed ingredients of Section 420 of IPC and basically the dispute is purely civil in nature.

4. Mr Kantak appearing for the Petitioner strongly contended that though the timing of the FIR was only to prevent the Petitioner from campaigning for his party candidate in the Zilla Parishad Elections. However, Mr Kantak further submitted that he will not press this ground for the purpose of arguing the petition.

5. Mr Kantak then would submit that the Petitioner is a businessman apart from his political engagements and having offices at various places

in Goa. He is active in social and political field in the State and contested Goa Assembly Elections of the year 2017 as an independent candidate from Mandrem Constituency. Petitioner also served as Director of Goa Tourism Development Corporation. Mr Kantak then would submit that due to political rivalry, a complaint was lodged by Respondent No.4 on 23.10.2020 alleging that Petitioner committed offence of cheating in respect of property bearing Survey No.481/0 of Village Dhargalim, Pernem Taluka. He then submitted that Respondent No.4 deliberately suppressed pendency of civil proceedings from the year 2018 itself filed by Respondent No.4 against the Petitioner and others in respect of same property, claiming declaration that the Respondent No.4 being the co-owner of the said property and praying to set aside the sale deeds. Petitioner appeared before the Investigating Officer and cooperated with the agency. He also filed an application for anticipatory bail which was granted by the Sessions Court.

6. Mr Kantak would then submit that even though Respondent No.4 claimed to be co-owner of the said property, there are absolutely no allegations of any communication between the Petitioner and Respondent No.4 so as to induce Respondent No.4 from disposing off his property. The Petitioner disputes the claim of co-ownership of Respondent No.4. Therefore, according to Mr Kantak, ingredients of Section 415 of IPC are not at all made out so as to register FIR.

7. Mr. Kantak placed reliance on the following decisions:-

- i. *Mohammed Ibrahim and Ors. vs. State of Bihar and Anr.*¹,

¹ (2009) 8 SCC 751

- ii. ***Prof. R.K. Vijayasathya and Anr. vs. Sudha Seetharam and Anr.***², and
- iii. ***Vikesh K. Harmalkar and Anr. vs. Officer-in-charge/Police Inspector, Mapusa Police Station and Ors.***³.

8. Per contra, the learned Additional Public Prosecutor Mr Faldessai submitted that the Investigating Officer has furnished report in sealed cover as directed by this Court which is self sufficient to show that there is material to register FIR and to prosecute the Petitioner and ingredients of Section 415 of IPC are prima facie attracted. He would submit that the Petitioner being Power of Attorney holder of Sanjay Sadashiv Natekar and Vidhya Sadashiv Natekar, illegally sub-divided the said property bearing Survey No.481/0 of Dhargalim village by showing it as the property of only Sanjay Natekar and Vidhya Natekar even though the Petitioner was well aware that this property is also belonging to Respondent No.4 whose name appears in the survey records as co-occupant along with Natekar family. He would submit that the Special Investigation Team constituted by the Government of Goa for the various claims of land grabbing is in progress and at advanced stage and fresh material has been already collected. He therefore submitted that at this stage, this Court should not interfere as the powers under Section 482 of Cr.P.C. are required to be exercised sparingly.

9. Mr Arun de Sa who appeared on behalf of Respondent No.4 strongly contended that ingredients of Section 415 of IPC are squarely made out and he specifically relied upon Explanation (i) to demonstrate

² (2019) 16 SCC 739

³ 2022 SCC OnLine Bom 2610

his case that dishonest concealment of fact is a deception within the meaning of cheating.

10. Mr De Sa placed reliance on the following decisions:-

- i. *State of M.P. vs. Awadh Kishore Gupta and Ors.*⁴,
- ii. *Indian Oil Corpn. vs. NEPC India Ltd. and Ors.*⁵,
- iii. *Inder Mohan Goswami and Anr. vs. State of Uttaranchal and Ors.*⁶.

11. The rival contentions fall for consideration.

12. In the case of *M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Ors.*⁷, the Apex Court after considering all earlier decisions including the landmark decision in the case of *State of Haryana & Ors. vs. Bhajan Lal & Ors.*⁸, carved out points which are as follows:-

“i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the ‘rarest of rare cases’. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been

4 (2004) 1 SCC 691

5 (2006) SCC 736

6 (2007) 12 SCC 1

7 AIR 2021 SC 1918

8 1992 (1) SCC 335

formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned

Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

13. It is also well settled proposition of law that while exercising powers under Section 482 of Cr.P.C., the Court is not bound to appreciate evidence or to conduct a mini-trial. At this stage, it is impermissible to look into the material, the acceptability of which is essentially a matter of trial.

14. In the case of *Inder Mohan Goswami and Anr.* (supra), the Hon'ble Three Judge Bench of the Apex Court observed in para 27 as under:-

“The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been

collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.”

15. In the case of ***State of Odisha v/s. Pratima Mohanty Etc⁹***, the Apex Court while dealing with powers under Section 482 of Cr.P.C. reiterated as under:-

“6.2 - It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the charge sheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C., the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the minitrial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.”

16. Coming back to the matter in hand, complaint filed by respondent no.4 state that the petitioner claiming to be a Power of Attorney holder of Natekar family, fraudulently and dishonestly executed Deed of Sale and sold various plots from the said property claiming to be owners and knowing that part of the said property belongs to respondent no.4 and

⁹ AIR 2022 SC 41

thereby cheating the complainant to the tune of ₹25.30 crores approximately.

17. These allegations show that respondent no.4/complainant is claiming to be the co-owner of the said entire property along with Natekar family. The name of respondent no.4 appears in the survey records as co-occupant. The Power of Attorney executed in favour of the petitioner shows that the said Natekar family are the co-owners. Similarly, a civil suit is pending filed by respondent no.4 challenging the sale deeds executed by the petitioner in favour of various persons. Learned counsel Shri De Sa while arguing the matter submitted that in all 200 plots were sold to different persons by the petitioner without conversion and subdivision of the said property.

18. Section 415 of I.P.C. deals with cheating wherein it is provided that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”. Explanation to Section 415 of I.P.C. gives illustration and Mr De Sa, learned counsel appearing for respondent no.4 places reliance on explanation (i). It reads thus:-

'a) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.'

19. We are unable to accept the contention of Mr De Sa about the application of illustration (i) to the matter in hand. However, these illustrations are not exhaustives and the word “cheating” is having the meaning as provided under the Section itself. Dishonest intention of concealment of facts is a deception within the meaning of Section 415. In this matter, prima facie, it shows that from the records of survey, it is sufficient to show that the name of respondent no.4's ancestors appear in the occupant's column. No doubt such survey records are not having any presumptive value as far as the title of respondent no.4 is concerned. But, it, prima facie, shows that respondent no.4 and his ancestors were having some right in the said property. The entry in the occupant's column shows the presumption of correctness of entries in Record of Rights and Register of Mutation as provided under Section 105 of Land Revenue Code.

20. The supplementary complaint of respondent no.4 dated 13.10.2022 gives further details wherein allegations are also made against Vidhya Sadashiv Natekar and Sanjay Sadashiv Natekar by committing fraud and also criminal conspiracy. The Power of Attorney dated 24.12.2012 executed by Sanjay Natekar and Vidhya Natekar in favour of the petitioner shows that the said Natekar family are the co-owners. Shri Kantak, learned Senior Counsel would submit that the word 'co-owners' appearing in the Power of Attorney refers to co-ownership of Sanjay Natekar and Vidhya Natekar and not of others. We, at this stage, cannot accept such interpretation for the simple reason that the name of respondent no.4 or his ancestors clearly appears in the survey records and that too, in the occupants column and thus, the reference of co-

ownership of Vidhya Natekar and Sanjay Natekar cannot be interpreted as tried to be projected on behalf of the petitioner.

21. The sale deeds executed by the petitioner as Power of Attorney holder or Confirming Party show that the said property was owned by Vidhya Natekar and Sanjay Natekar only. It, therefore, shows that even purchasers are induced to purchase plots on the ground that such property only belongs to Natekar family of which petitioner is Power of Attorney.

22. We have perused the report from the Investigating Officer and it is clear from the said report that the Government formed S.I.T. (Land Grab) and all such matters have been assigned to the said S.I.T. for investigations. It further shows that survey no.481/0 of Village Dhargal admeasuring 118845 square metres is depicted as garden crop, out of which 500 square metres is shown as uncultivable area and that no conversion of such land has been issued by the competent authorities. Similarly, in the survey records numerous co-occupants got their names mutated showing that they purchased small plots in the said undivided property which were sold to them by the petitioner being Power of Attorney holder. This further shows that more than 200 plots in the undivided property were sold from the year 2013 till 2018 without any conversion, sub-division and development of the entire bigger property.

23. We are not referring, at this stage, the other material collected by the investigating agency since it is not necessary for us to disclose all other aspects, for the sake of keeping the investigations with the police authorities and the S.I.T only and not to create any inconvenience to such S.I.T. However, fact remains that there are specific material which have

been brought on record during the investigation carried out by the S.I.T. which, prima facie, show that the matter needs thorough investigation by the S.I.T. formed by the Government.

24. Only because the petitioner belongs to some political ideology, which is opposing the present Government, it cannot be said that such acts which were going on since the year 2013 can be ignored only on the specious premise of targetting the petitioner. He admittedly claimed to be a businessman involved in property transactions. Thus, the decision in the case of *Mohammed Ibrahim* (supra) relied upon by Mr Kantak would not help the petitioner since in that matter, chargesheet was filed and entire material was before the Court. In this case the investigation is advanced and it is not proper for this Court to discuss the material collected by the investigating agency for the purpose of exercising the powers under Section 482 of Cr.P.C. for the simple reason that it would amount to mini-trial.

25. Similarly, the case of *Prof. R.K. Vijayasathy* (supra) is also not helpful as the matter in hand cannot be simply brushed aside as purely civil in nature as ingredients of Section 415 of Cr.P.C. in connection with dishonest and fraudulent intention and selling of the property of respondent no.4 who is claiming to be one of the co-owners, are made out.

26. We make it clear that once the investigation is complete and if the chargesheet is filed, the petitioner would be having an opportunity to apply for discharge in case such material is not found sufficient to frame charge. However, at this stage, we are not inclined to exercise the discretion for the simple reason that, it is not considered proper to scuttle

the investigations carried out by S.I.T at this advance stage. Similarly, it is not considered as rarest of rare case as discussed by the Apex Court in the case of *M/s. Neeharika Infrastrure Pvt. Ltd.*, (supra). In such circumstances, we are not inclined to exercise our discretionary jurisdiction under Section 482 of Cr.P.C.

27. The petition is, therefore, dismissed.

28. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.