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APL 277 of 2023-1.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 277 OF 2023

Hemendra Pranjivan Bosmiya

...Applicant

V/s.

The State of Maharashtra & Anr.

...Respondents

Mr. Sanjeev B. Deore with Ms. Suchita J. Pawar for the Applicant.

Ms. A. S. Pai, Public Prosecutor a/w Mr. Ajay Patil, APP for the Respondent State.

Mr. Sujit Shelar with Mr. Pankaj Shinde and Ms. Saritha Suvarna for Respondent No. 2.

**CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.**

DATE : 5th OCTOBER, 2023.

ORDER : (PER SHARMILA U. DESHMUKH, J.)

1. Heard Mr. Sanjeev B. Deore, learned Advocate for the Applicant, learned PP for the Respondent-State and Mr. Sujit Shelar learned Advocate for Respondent No. 2. Perused record annexed to Application.

2. By this Application filed under Section 482 of Cr.PC., the Applicant seeks quashing and setting aside of CR. No. 166 of 2022 registered by Mira Road Police Station for the offences punishable under Section 420, 464, 465, 471 and 474 read with Section 34 of the IPC. This Court is informed that the chargesheet has been filed in the Court

of Chief Judicial Magistrate, Thane and it is numbered as RCC No. 2765 of 2023.

3. As the chargesheet has been filed, we pointed out to Mr. Deore, that the case of the Applicant would be benefited, if an application of discharge is preferred before the Trial Court. We also pointed out, the decisions of the Apex Court in the case of *Central Bureau of Investigation vs. Aryan Singh (AIR 2023 SC 1987)* and *Manik B vs. Kadapala Sreyes Reddy & Anr., (2023 LiveLaw (SC) 642)*. Despite the aforesaid legal position being brought to the notice of the learned Advocate for the Applicant, he insisted on proceeding with the hearing of the matter on merits. As such we have heard Mr. Deore at length.

4. Mr. Deore, learned Advocate for the Applicant submits that the FIR alleges fabrication of certain documents in respect of the subject property viz Conveyance Deed registered under document bearing No. 2426/1983 alleged to have been executed between Rose Alex Hendrix and Pyarasaheb Kesarisingh Rana, Power of Attorney dated 4th August, 2003, Memorandum of Understanding dated 4th August, 2003 executed between the Applicant and Pyarasaheb Rana. He would submit that, the possession of the property was with the Applicant since 4th August, 2003 and that two FIR's have been registered by the Applicant against the first

informant for alleged trespassing and preparing forged documents. He would submit that, the first informant has prepared fake Power of Attorney of Rose Alex Hendrix and on that basis have got registered unilateral Deed of Confirmation and Deeds of Conveyance. He would further submit that on identical allegations, the Respondent No. 2 had lodged a complaint with Inspector General of Police (Kokan Region), who directed Superintendent of Police, Thane Rural to carry out detailed investigation. He would urge this Court to peruse the report submitted on 2nd July, 2016 by the Superintendent of Police, Thane Rural, who has come to the conclusion that, the registered document bearing No. 2426 of 1983 is genuine document. He would submit that, this fact was suppressed by the informant while lodging the present FIR. He would further submit that based on identical allegations, an Application under Section 156(3) was filed in the year 2017 before the Court of the JMFC, Thane and the same is pending. He would submit that, after the report of 2016, and the complaint of year 2017, the present FIR has been lodged in the year 2022 and the same amounts to abuse of process of law.

5. In the case of *Central Bureau of Investigation vs. Aryan Singh (AIR 2023 SC 1987)*, the Apex Court held that, the High Court cannot

conduct a mini trial for appreciation of evidence on record while dealing with an application under Section 482 of Cr.P.C., as if it is a mini trial and consider the application as if those are against the Judgment and Orders of the Trial Court on conclusion of trial.

5.1. In the case of *Manik B vs. Kadapala Sreyes Reddy*, the Apex Court has held that, the scope of interference while quashing the proceedings under Section 482 of Cr.P.C. is very limited and the power would be exercised only if the Court finds that taking the case at its face value, no case is made out at all. That, it is not permissible for the Court to go into correctness or otherwise of the material placed by the prosecution in the chargesheet.

5.2. In the case of *Iqbal @ Bala and Ors. vs. State of U.P. and Ors., (2023 SCC Online SC 949)*, the Apex Court declined to interfere in the order of the High Court rejecting the petition filed for quashing of the FIR, taking note of the fact that, the investigation had been completed and chargesheet is required to be filed. The view taken by the Apex Court is that the Trial Court should be allowed to look into materials which the investigation officer might have collected forming part of the chargesheet, despite the observation of the Apex Court that the allegation leveled in the FIR do not inspire any confidence.

6. The case of the prosecution as spelt out from the FIR is that, the First Informant- partner of M/s. Ravi Developer (Erstwhile Shaha & Datani Associates) had purchased the subject property from its original owner Rose Alex Hendrix vide Agreement dated 18th February, 1992, with one Nalin Jamnadas Tijura being the confirming party, with whom the owner had executed a development Agreement in the year 1988. It is alleged that in respect of the subject property, one Pyarasaheb Kesarisingh Rana (now deceased) and the Applicant - partner of M/s. Rashmi Properties in collusion with each other have forged and fabricated Conveyance Deed dated 15th March, 1983 alleged to have been executed between Rose Alex Hendrix and Pyarasaheb Rana, Memorandum of Understanding dated 2nd August, 2003, Power of Attorney dated 4th August, 2003, Conveyance Deed of April 2013 executed between Pyarasaheb Rana and Applicant and registered Conveyance Deed dated 5th May, 2014 executed between the present Applicant as constituted Attorney of Pyarasaheb Rana and M/s. Rashmi Properties. It is alleged that under Right to Information Act, application was filed by the First Informant in respect of the document dated 15th March, 1983 alleged to have been registered vide document No.2426 of 1983. It was informed by Shri. Anil Dev Sub Registrar of Assurances vide

communication dated 3rd March, 2017 that the documents submitted by Gagikar Harkishan for registration on 24th August, 1983 and document bearing No. 2425 of 1983 and 2426 of 1983 are not sale agreements but rent agreements. It is alleged that the Deed of Conveyance dated 15th March, 1983 is not registered vide document No.2426 of 1983. It is alleged that the Conveyance Deed dated 15th March, 1983 and other documents submitted by the Applicant from time to time during the investigation as well as in the Government offices are fabricated documents.

7. The sum and substance of the allegations is that, the Applicant along with the others in collusion with the officials of the registration office, without due registration of the Deed of Conveyance dated 15th March, 1983 have misused the registration No. 2426 of 1983 and have fabricated the document to stake a claim to the subject property. That on the basis of the fabricated document, Conveyance Deed has been registered in the name of the Applicant in respect of the subject property. That the Applicant has submitted these forged documents in various Government offices and have cheated the Government as well as the Applicant.

8. The offences alleged are Section 420, 465, 467, 468, 471 and

474 read with Section 34 of the IPC. The foundation document which is the Deed of Conveyance dated 15th March, 2003, which is portrayed as a duly registered document by the Applicant to stake his claim to the subject property, is alleged to be a fabricated document and without being registered, is shown as registered under document No.2426 of 1983. The FIR refers to the communication of Shri. Anil Dev, the Sub-Registrar, that on 24 August, 1983, the documents submitted by Mr. Gagikar Harkishandas for registration and document bearing No.2425 of 1983 and 2426 of 1983 are not Sale Deeds but rent agreements. At this stage, we see no reason to disbelieve the contents of the communication addressed by the Sub-Registrar. The documents registered under 2425 of 1983 and 2426 of 1983, which as per the communication of Shri. Anil Dev are rent agreements, are alleged to be used as genuine registered title deeds in respect of the subject property and utilized for execution of Conveyance Deed in his favour by the Applicant, and, submitted as genuine document in various Government offices.

9. Taking the allegations in the FIR at its face value, in our opinion, it cannot be said that no case at all is made out. On the contrary, we find that the allegations makes out more than sufficient case of fabrication of documents of title deeds in respect of landed

property by misusing the registration number of other documents thereby cheating the government officials and the First Informant. The correctness of the allegations is a matter to be considered by leading evidence at the time of the trial.

10. Mr. Deore, learned Advocate for the Applicant wants this Court to examine the veracity of the allegations made in the FIR by drawing attention of this Court to the report dated 2nd July, 2016 given by the Superintendent of Police, which according to the Applicant demonstrates that the investigation of the Superintendent of Police concludes that, there is no forgery committed and that the document bearing No.2426 of 1983 executed between the Rose Alex Hendrix and Pyarasaheb Rana and two other persons are legal and genuine documents.

11. Upon a query of this Court, as to whether the document forms part of the chargesheet, Mr. Deore is unable to respond positively. As such we have declined to examine the said document and in any event, the report, if any, constitutes the defence of the Applicant during the trial. It is not permissible in law for this Court in exercise of power under Section 482 of Cr.P.C. to embark upon the journey of examining the veracity of allegations made in the complaint and to examine the

defence of the accused as the same would amount to conducting a mini trial which has been precisely forbidden as per the decisions discussed above.

12. As the pleadings as well as the submissions advanced by Mr. Deore falls within the realm of the defence of the Applicant, we enquired with Mr. Deore as to whether there is any authority to support the proposition that the defence of the accused can be examined in an Application under Section 482 of Cr.P.C. He relies upon the decision of the Apex Court in the case of *Rajeshbhai Muljibhai Patel & Ors. vs. State of Gujarat & Anr.*, [(2020) 3 SCC 794] and *Kapil Agarwal & Ors. vs. Sanjay Sharma & Ors.*, [(2021) 5 SCC 524].

13. As far as the submission advanced that an Application under Section 156(3) was filed by the Applicant prior to the lodgment of the present crime, the decision of *Kapil Agarwal & Ors. vs. Sanjay Sharma* cited by Mr. Deore is sufficient answer to the said submission. The Apex Court in the said decision considered the submission raised before it that on the same allegation, the complainant had filed an Application under Section 156(3) which was pending before the Magistrate. After considering the provisions of Section 210 of Cr.P.C., the Apex Court held that, merely because on the same set of facts with the same allegations

and averments earlier, the complaint is filed is no bar to lodge the FIR with Police Station with the same allegations and averments. The caveat being that, if it is found that the subsequent FIR is in abuse of process of law and/or is lodged only to harass the accused, the same can be quashed. We do not find any material produced by the Applicant to demonstrate that the lodgment of the crime pending the adjudication of Section 156(3) complaint is an abuse of process of law. The decision in the case of *Rajeshbhai Muljibhai Patel vs. State of Gujarat*, which according to the learned Advocate appearing for the Applicant is based on identical facts, discloses that, in the facts of that case, the Apex Court had quashed the FIR.

14. As held by the Apex Court in the case of *Manik B vs. Kadapala Sreyas Reddy and Anr.* (supra), the factors to be considered by this Court while quashing proceedings under Section 482 of Cr.P.C. and while considering an application for discharge are totally different. Bare perusal of FIR, clearly make out a prima facie case against the Applicant. Having regard to the discussion above, we have no hesitation to conclude that the pleadings in the application and arguments advanced across the bar clearly indicates, that the Applicant wants this Court to conduct a mini trial while exercising our jurisdiction under Section 482

of Cr.PC. which is not permissible in view of the aforestated decisions.

15. According to us, no case for quashing of present crime is made out. Application is dismissed.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)