

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.4014 OF 2021

1. Dr.Krishna Bhaskar Nimshakhare
Age -46 years, permanent resident of
102/2, Rameshwadi Bhagwati
Hospital, Badlapur West, Thane
District, Pin-421503.

CHITRA
SANJAY
SONAWANE

Digitally signed
by CHITRA
SANJAY
SONAWANE
Date:
2023.08.17
11:14:50 +0530

2. Dr.(Mrs.) Chhaya Krishna Nimshakhare
Age 46 years,
Resident of 102/2, Rameshwadi Bhagwati
Hospital, Badlapur West, Thane
District, Pin-421503.

3. Anil Bhaskar Nimshakhare
Age 40 years, Resident of 102/2,
Rameshwadi Bhagwati
Hospital, Badlapur West, Thane
District, Pin-421503.

4. Mrs. Maya Anil Nimshakhare
Age 34 years, Occupation House
Wife, Resident of 102/2,
Rameshwadi Bhagwati
Hospital, Badlapur West, Thane
District, Pin-421503.

..... Petitioners.

Vs.

1. The State of Maharashtra
through the Senior Inspector of
Police, Badlapur West Police Station,
Thane City District, Maharashtra.

2. Abdul Jabbar Shaikh, Divisional
Waqf Officer, Konkan Division,
Office of the Collector, S.B.S.Marg,
Fort, Mumbai-400 001.
(Complainant)

..... Respondents.

.....

Mr Ramesh Ramamurthy a/w Saikumar Ramamurthy a/w Kavita
Anchan a/w Seema Sorte a/w Karthik Pillai, Advocate for
petitioners.

Mr JP Yagnik, APP for State.

Mr. Rahimtulla M. Momin for Respondent No.2.

API Vinod U. Patil, Badlapur West Police Station present.

.....

CORAM : Nitin W. Sambre
& R.N.Laddha, JJ.

DATE : 2nd August, 2023.

....

Order (Per Nitin W. Sambre, J.)

Prayer in the petition is for quashing of FIR in Crime
No.62/2021 registered on 24.5.2021 for the offence punishable
under Sections 420, 467, 468, 471 r/w 34 of the Indian Penal
Code and Section 52(A) of the Waqf Act, 1995. The petitioners
are also questioning the charge-sheet. In-charge Waqf Officer,

Konkan Division, Mumbai, has lodged a complaint alleging that the subject matter of the crime being land bearing Survey No.243/4 area 0.34.09 H.A., Survey no.243/5 area 0.36.07 H.A. and Survey No.36/4 area 0.35.06 H.A., are the Waqf properties belonging to Juma Masjid Trust, Badlapur. Secretary of the said Trust allegedly entered into an Agreement of Sale in favour of the petitioners vide registered deed dated 29.7.2011. Amongst other recitals in the Agreement, one of the recital was that the members of Waqf Executive Committee shall secure appropriate permission from the Waqf Board. The recitals of the Agreement further speaks of the consideration amount having being paid by the petitioners through RTGS or cheques.

2. It is claimed that NOC for the purpose of execution of a long term lease of 30 years in favour of the petitioners, by the office bearers of Waqf Board procured on 18.10.2012 is a forged document, which is formed to be the basis of the offence registered against the petitioners.

3. While questioning the very initiation of the criminal proceedings in the form of FIR and chargesheet, Mr. Ramamurthy would urge that satisfaction of necessary ingredients of Section 52-A of the Waqf Act, cannot be inferred as neither the petitioners are in possession of the property which is agreed to be purchased nor there is purchase or sale deed of property. According to Mr. Ramamurthy, the petitioners never participated in the matter of procurement of forged NOC dated 18.10.2012 as it can be inferred from the investigation carried out that alongwith the Trust of the Waqf Board it was Iftekar Rashid Kazi, Advocate by profession, whose services were hired for the purpose of issuing of NOC, is the person instrumental in the alleged offence. So as to substantiate his claim, the learned Counsel for the petitioners invited our attention to the recitals in the registered Agreement dated 29.7.2011, referred above, complaint preferred by the petitioners to the State Government on 4.11.2020, and the contents of the FIR.

4. According to Mr. Ramamurthy, there is no element of *mens*

rea on the part of the petitioner in forging the document in the matter of procurement of forged NOC. Petitioner Nos. 1 and 2 being doctors were unaware about the procedure and as such hired the services of Iftekar Rashid Kazi, a Advocate by profession, for the purpose of processing NOC. It is claimed that hiring of services of an Advocate cannot be termed as offence but for forging NOC, which was never procured by the or upon instructions of the petitioners. It is submitted by the learned Counsel for the petitioners that necessary ingredients of forgery cannot be inferred. Mr.Ramamurthy would submit that bonafide of the petitioners can be inferred from the fact that they have paid the consideration in the form of cheque/bank payments. It is submitted that execution of registered deed by an agreement and the complaint to the State Government being the whistle-blower.

5. Mr. Yagnik, learned APP for the State would urge that the co-accused Iftekar Rashid Kazi, Advocate by profession, was the person who was having acquaintance with the father-in-law of

petitioner no.1 and father of petitioner no.2. This Court must as such infer that Iftekar Rashid Kazi would be procuring forged NOC with the help of the Trustees of the Juma Masjid Trust was a fact within the knowledge of the petitioners and it is for the petitioners such NOC was procured sufficiently remains their impleadment as against in the case. He would further urge that at this stage, it is not open for the Court to infer whether there was intention on the part of the petitioners to commit the offence, as such prayer is made for dismissal of the petition.

6. We have appreciated the submissions.

7. The fact about there being registered Agreement in between the petitioners and the co-accused who were the Trustees of the Juma Masjid Trust being the President and Secretary, is apparent from the record. The recitals in the said document is duly admitted by the parties to the petition, sufficiently establishes that it was the responsibility of the Trustees of the said Masjid to secure

the permission from the Waqf Board for transferring/vesting of title in the petitioners with regard to the property, which is the subject matter of the Agreement of Sale. The recitals further speaks of the co-accused having received substantial amounts, break up of which also is part of the registered Agreement of Sale.

8. Pursuant to above, it appears that the Trustees hired the service of the co-accused, who is an Advocate by profession for processing the request for the purpose of having NOC so as to take Agreement of Sale to its logical end by executing registered sale deed in favour of the petitioners by the Trustees.

9. The fact remains that the recitals does not speak about the possession being received by the petitioners.

10. Once, the possession is not received by the petitioners, as can be inferred by the recitals in the deed, so also from the pleadings and provisions of Section 52-A of the Waqf Act are not attracted

and as such offence under the said provisions, cannot be inferred against the petitioners, particularly, they not having received the possession of the Waqf property in question.

11. Apart from above, the investigation papers if read as a whole, what can be noticed is the co-accused, who is a Advocate by profession, has accepted the amount towards his profession fees through cheques from the petitioners. The petitioners were prompted to pay the amount and in view of the fact that the petitioners have already parted with the Trustees towards consideration of the property in question.

12. It is under such circumstances, the petitioners perhaps were prompted to part with the profession fees to the co-accused Iftekar Rashid Kazi, with an intention to get the request for NOC process in accordance with the law.

13. The investigation carried out till this date, does not reflect

that the petitioners had instructed the co-accused or the Trustees of the said Trust, to have forged NOC for the purpose of getting long term NOC in their favour. Apart from above, nor the investigation depicts the intention of the petitioners to claim that there was backdated NOC for the purpose of execution of deed in question. Rather conduct of the petitioners, for bringing the fraud being practiced allegedly which is formed to be the basis of the offence sufficiently establishes that the petitioners never wanted to be a party to the illegality or forgery.

14. In this background, considering the very essence of the allegations against the petitioners, ingredients of forgery can not be inferred against the petitioners.

15. The only role attributed to the petitioners, is beneficiary under the forged NOC dated 18.10.2012.

16. In this background, it has to be inferred that the case for

continuing prosecution against the petitioners for the offence alleged is not made out. Rather satisfaction of ingredients for the offence of cheating, cannot be inferred, particularly, when the petitioner himself is cheated by the co-accused Iftexhar who is a Advocate by profession.

17. We have already observed herein-above that the petitioner Nos.1 and 2 are the doctors. All the four petitioners have entered into a registered agreement with the President and Secretary of Jumma Masjid Trust for purchase of the land through a registered agreement and have already parted with the consideration through various cheques. The requirement of the condition for having no objection from the Waqf Board was known to the petitioners, so also, to the co-accused is a fact borne out from the recitals of the agreement of sale.

18. In this background, the petitioners have taken assistance of an Advocate, as is claimed by the prosecution, even if

considered against the petitioners, there is nothing unnatural on taking assistance of an Advocate for prosecuting the proceedings before the Waqf Tribunal. The co-accused, Advocate has for reasons best known to him has charged the petitioners, which amount is received by co-accused in his account. It is not the case of the prosecution as stated earlier that the petitioners at any time instructed the co-accused for forging NOC from the Waqf Board.

19. In this background, the conduct of the petitioners of contacting a Advocate or having interacted with the Advocate or making payment of profession fees to his account cannot be termed as unnatural act in the given set of circumstances.

20. In these circumstances, one cannot be led to standard of reasonableness or the expected behaviour from the parties like the petitioners as the response of the parties like petitioners who *prima-facie* appears to have been deceived by the co-accused depends on the customs, manner, way of life, the traditional values

etc. As such, in the given set of circumstances, if the petitioners have interacted with the co-accused, an Advocate that by itself will not thereby infer criminal intention for commission of offence of forgery. Apart from above, it is not the case of the prosecution that the forged undated NOC is used by the petitioners as genuine one for creating the title in their favour. Rather on one hand the petitioners have already lost money and on other hand, they are being shown as accused when in fact they should have been shown as star witnesses in the matter being person deceived/cheated. Petitioners' natural conduct is also required to be appreciated viz. lodging a complaint to the State Government which formed to be a basis for registration of the offence in question.

21. In view of above, the petition is allowed in terms of prayer clauses (a) and (dd).

22. In the case in hand, the petitioners could have been the star witnesses, but they have become the victim of the fraud committed

by the co-accused Iftekar Rashid Kazi. In this background, we give liberty to the Investigation Officer to consider whether he intends to cite the petitioners as witnesses in the criminal prosecution.

[R.N.Laddha, J.]

[Nitin W. Sambre, J.]