



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

CRIMINAL APPLICATION NO.846 OF 2022

Sudhir s/o Laxmikant Shirkhedkar,
age 59 years, Occ. Service as Technical Officer,
R/o. Plot no.216, Near Water Tank,
Laxminagar, Nagpur.

Applicant
orig. accused.

Versus

1. The State of Maharashtra,
through Police Inspector,
Cidco Police Station,
Aurangabad.
 2. Chandrakant s/o Laxmikant Shirkhedkar,
age 61 years, Occ. Retired (service),
R/o Plot No.30, Chatapati Nagar,
Behind Reliance Mall, Garkheda,
Aurangabad.
- Respondents.
(R-2 orig accused)

...

Advocate for Applicant : Mr. C.V. Dharurkar
APP for Respondent 1: Mr. S A Gaikwad
Advocate for Respondent no.2 : Mr. P.M. Nagargoje

...

**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

Reserved on : 18th October, 2024.

Pronounced on : 18th November, 2024.

ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The applicant seeks to quash and set aside
the FIR No.63 of 2022 dated 5.2.2022 registered with
Cidco Police Station, Aurangabad for the offences

punishable under section 199, 420, 467 r/w 34 of the IPC so also consequential proceeding in RCC No.2830 of 2023 pending before the 7th Judicial Magistrate First Class, Aurangabad.

2. The Respondent no.2, who is real brother of the applicant lodged report with the police station alleging that plot no.6 admeasuring 518 sq. meters was allotted by Cidco in favour of his mother. On 31.10.1996 a development agreement was entered between his mother and wife for 141.10 square meters area out of the said plot. His wife secured loan from the Bank of Maharashtra and raised construction over the property. On 5.2.2003 his mother expired. He made joint application alongwith the applicant/accused for issuance of letter of administration before the Civil Court, at Aurangabad vide MA.no. 402 of 2006. Consequently, letter of administration dated 26.11.2006 has been issued in joint name of brothers. Although there was no division of the plot between the brothers, accused without his permission submitted inventory before the Civil Court in pursuance to the proceedings

for issuance of letter of administration. The inventory contains uncertified map of the plot. Map depicts that northern portion of the plot is in possession of informant-Chandrakant, whereas southern portion is in possession of accused Sudhir. It is alleged that there were no directions from the Court to show division of the plot while submitting the inventory. Map was not exhibited on record of the Court.

3. On 2.1.2021 he submitted application for certified copy of the documents in MARJI No.402 of 2006 before the Civil Court. On 6.1.2021 his application was rejected giving reason that inventory has not been exhibited by the Court. He obtained information regarding transfer order from Cidco and found that his brother Sudhir misrepresented Cidco office regarding Division of the plot and acceptance of inventory by the Court depicting division. It is alleged that his brother Sudhir used unexhibited map/inventory and secured order of division of the plot in two parts 'A' and 'B' and also secured entry in record of Cidco and Municipal Corporation. Accused Sudhir

submitted false application stating that demarcation has been approved by the Court. Consequently, vide order dated 2.3.2022 Municipal Corporation, Aurangabad recorded division of the plot and initiated recovery of the taxes.

4. On the basis of such report coupled with directions by the learned JMFC under section 156 (3) of Cr.P.C. crime no.63 of 2022 has been registered against applicant for the offences punishable under section 199, 420, 463, 467 r/w 34 of the IPC.

5. Mr. Dharurkar, learned advocate appearing for the applicant vehemently submits that there is civil dispute between the brothers as regards to demarcation of the plot which was originally owned by their mother. He would submit that on the basis of the joint application of the brothers, letter of administration has been issued by the Civil Court in joint name of the both brothers. However, in view of the adjustment among them, plot was divided in two parts and is in possession and enjoyment of the brothers. He would submit that, in fact, respondent no.2 had leased part of the property

to “V Card Pharma” on the basis of forged consent letter depicting applicant's signature. The complaint in this regard was lodged to police station by the applicant. Mr. Dharurkar would submit that sister of the applicant in connivance with respondent no.2 has now filed civil suit seeking decree of partition and separate possession in respect of the suit plot and other properties. The same has been pending before the Court.

6. Mr. Dharurkar invites attention of this Court to the inventory submitted to the Civil Court in the proceeding for issuance of letter of administration. Although, it has been submitted by the applicant showing division of the plot, it has not been exhibited or made part of the evidence in the proceeding. He would submit that, although Division of the plot had been recorded in pursuance of the application made by the present applicant to the Cidco and Municipal Corporation, such division has been recalled and matter would be resolved only by the Civil Court. He would submit that there is no reason for registration of the FIR and consequential criminal proceeding. This is a case of

pure civil dispute between the parties raising rival claims regarding division of the plot. Albit, there is no dispute as regards to joint ownership. Mr. Dhrurkar, would submit that even if it is assumed for the sake of arguments that claim regarding division of the plot was persuaded by the applicant, which is not admitted to respondent no.2, at the most it would be civil dispute, which cannot be given colour of criminality. According to him, contents of the FIR do not make out any offence of cheating or forgery, as alleged. He would therefore urge to quash and set aside the proceeding in exercise of inherent powers of this Court.

7. Per contra, Mr. S.A Gaikwad, learned APP for State and Mr.P.M.Nagargoje, learned advocate appearing for respondent no.2 would justify registration of the FIR and urges that there is triable material against the applicant/accused. The proceeding be relegated to the trial as no case is made out for exercise of inherent powers.

8. We have considered the submissions advanced by the learned advocates appearing for the

respective parties. We have perused contents of the FIR, material in the charge-sheet and relevant uncontroverted documents. We observe that subject plot was allotted by Cidco in the name of Smt. Vaijayanti i.e. mother of applicant and respondent no.2. She expired on 5.2.2003. RCS No.768 of 2004 was filed by respondent no.2 seeking perpetual injunction. However, said suit was not prosecuted and finally dismissed in default. On 16.6.2006 applicant and respondent no.2 made joint application for grant of letter of administration in MARJI No.402 of 2006. Their sister gave no objection for issuance of letter of administration in favour of the brothers. Consequently, the Civil Court issued letter of administration dated 11.06.2007 in joint name of the applicant and respondent no.2. On 3.9.2007 Administrator Cidco issued transfer of lease hold rights in favour of the applicant and respondent no.2. The lease-deed dated 7.5.2018 has been jointly executed in the name of applicant and respondent no.2 by Cidco. In this background, gist of allegations is that the applicant made false representation to Cidco and Corporation Authorities regarding Division of plot on the

basis of unilateral inventory submitted by him and secured the order of division of one half (½) share, it can be said that applicant has raised incorrect claim. Pertinently, the inventory relied upon by the applicant was not tendered by way of evidence before the Civil Court. Although, applicant has made representation to authorities that inventory is accepted by the Court, consequently, division has been endorsed, such claim can be said to be fallacious. However, to attract the penal provisions under section 420, 463, 467 of the IPC, it must be shown that ingredients for making out such offences are made out from the allegations in the FIR and supporting material.

9. Section 415 of the IPC defines cheating, which reads thus :-

Section 415. Cheating :-

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.—

A dishonest concealment of facts is a deception within the meaning of this section.

10. To make out the offence of cheating, delivery of the property on the basis of intentional inducement to the person so deceived, is necessary. In this case, undisputedly, plot in question was jointly owned by both the brothers and there is nothing to depict that delivery of property was secured by inducement or any act of the applicant/accused. Similarly, to make out an offence under section 463 of the IPC making of false document with intention to cause damage or injury to any person or to support any claim or title is necessary. In the present case, what is alleged is that the applicant has presented inventory with map depicting division of the plot, which according to the respondent no.2 was unauthorized and without consent. Pertinently, inventory was not submitted for purpose of raising any claim as regards to particular part of the property. Inventory was submitted in pursuance to letter of administration issued by the Civil Court for the purpose

of identification of the property. Said document was neither admitted in the evidence nor it was exhibited. The Civil Court has not passed order relying upon such document. Although, it is apparent from the record that the applicant has persuaded his claim to record division of the property with Cidco and Corporation on the basis of such map, it cannot be given status of forgery. Pertinently, Cidco has withdrawn the order regarding division and now issue is pending for consideration before the Civil Court in the partition suit instituted by the sister. Therefore, rights of the parties would be decided finally in that proceedings.

11. At this stage, reference can be given to the guidelines laid down in case of State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors. Reported in **AIR 1994 SC 604** which are as under:

“108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by

way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report 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 out a case against the accused.”

12. In light of the aforesaid guiding principles, we find that continuation of the criminal proceeding would be abuse of process of law since ingredients of the offences are not discernible from contents of the FIR and charge-sheet. Similarly, we are of the considered view that dispute between the parties is predominantly of civil nature and the same has been given colour of criminality. We cannot countenance use of the procedure under criminal law to be used to settle the civil dispute. Hence, we deem it proper to exercise inherent powers under section 482 of the Criminal Procedure Code and quash and set aside the impugned

FIR and consequential proceeding. Consequently, we proceed to pass the following order.

O R D E R

- i. Criminal Application is **allowed** in terms of prayer clause “**B and B-1**” which reads as under :-

“**B.** By passing appropriate order or direction, the FIR No.63 of 2022 dated 5.2.2022 registered with Cidco Police station, Aurangabad Exhibit S) against the applicant for the offences punishable under section 199, 420, 467, r/w 34 of the IPC be quashed and set aside.

B-1. By passing appropriate order or direction, the charge-sheet dated 22.11.2023 (exhibit Y) filed with the Ld. 7th Judicial Magistrate First Class, Aurangabad and criminal proceeding in RCC No.2830 of 2023 may kindly be quashed and set aside.”

- iii. Criminal application stands **disposed off**.

(**S. G. CHAPALGAONKAR**)
Judge

(**SMT. VIBHA KANKANWADI**)
Judge

...

aaa/- (f)