



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

993 CRIMINAL APPLICATION NO. 1405 OF 2024

YESHWANT JAGANNATH JOSHI AND OTHERS
VERSUS
DEVIDAS RAMRAO GAIKWAD

...
Mr. Sharad V. Natu Advocate for Applicants.
Mr. R.K. Ashtekar Advocate for Respondent.
...

CORAM: S.G. MEHARE, J.

DATE : 20th JULY, 2024

ORDER :

1. Heard learned counsel for the applicant and learned counsel for the respondent.
2. The applicants have impugned the order of the learned Judicial Magistrate First Class, Court No.2 Latur, passed below Exhibit-1 in R.C.C. No. 992 of 2021, dated 14th June 2022.
3. The applicants have a case that respondent/complainant secured the order of issue process against the applicants by suppressing the material facts. He would submit that the plot in dispute was allotted to applicant No.3 in 1982. However, in 2000, he was to raise the loan. Therefore, the society executed a sale

deed in favour of applicant No.3. The society had also allotted nearby open areas to 10 plot holders by passing an appropriate resolution and charging the consideration.

4. Suddenly, the respondent/complainant woke up and filed a complaint of misappropriating the money under these transactions. He filed a complaint. On his complaint, the learned Judicial Magistrate ordered an inquiry under Section 202 of the Code of Criminal Procedure. Police made an inquiry and submitted the report. Thereafter, the Court considered the complaint, verification, the report received under Section 202 of the Code of Criminal Procedure, and the documents filed along with the complaint. After considering the material, the Court was satisfied that prima facie, the offence was made out. Therefore, the process has been issued.

5. Learned counsel for the applicants would submit that the order of issuing the process was secured by suppressing the material facts. He would submit that the learned Magistrate did not apply his mind. The investigating officer did not make a correct investigation. The investigating officer never visited the office of the society to find out the correct facts. Learned counsel concedes that whatever facts he argues before this Court were not before the trial Court. The applicants have put their appearance before the learned Judicial Magistrate First Class.

6. Prima facie, it appears that the learned Magistrate, considering the material available before it, has applied mind and issued process. In such a situation, the best remedy for the present applicants is to file an application for dismissal of the complaint on the grounds of suppression of facts. The said remedy is available to the applicants. Considering the submissions of learned counsel for the applicants, the Court is of the view that it would be inappropriate to quash and set aside the order of the learned Judicial Magistrate First Class, Court No.2, Latur, dated 14th June 2022, on the facts which are coming forward for the first time. Had those facts been before the Magistrate, he would have applied his mind to such facts. The Court takes cognizance of the offence on the basis of the complaint and the documents filed with it. Such orders are passed in the absence of the accused. In the circumstances where any order is obtained from the Court by fraud or suppressing the facts, it is a nullity and can be called back at any time. In such a case, it is not a review. The Magistrate must do justice to the person against whom the order is obtained by fraud and suppression of the facts.

7. In view of the above, the Application stands dismissed. However, the applicants may file an application for dismissal of

the complaint before the Magistrate on the grounds of playing fraud with the Court on suppression of the material facts.

[S.G. MEHARE, J.]

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