



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

**CRIMINAL APPLICATION NO.2070 OF 2020**

1. Gaus Khan S/o Hayat Khan Pathan,  
Age: 65 Years, Occu: Agri,
2. Matin Khan S/o Hayat Khan Pathan,  
Age: 60 Years, Occu: Agri,
3. Liyakat Khan S/o Hayat Khan Pathan,  
Age: 55 Years, Occu: Agri, citizen of
4. Javed Khan S/o Gaus Khan Pathan,  
Age: 40 Years, Occu: Agri,
5. Aayaj S/o Matin Khan Pathan,  
Age: 38 Years, Occu: Agri,
6. Ayyub S/o Maheboob Khan Pathan,  
Age: 60 Years, Occu: Agri,
7. Juber S/o Dastgir Pathan,  
Age: 38 Years, Occu: Agri,
8. Jamer S/o Dastgir Pathan,  
Age: 32 Years, Occu: Agri,
9. Muradbi S/o Dastgir Pathan,  
Age: 55 Years, Occu: Agri,

All R/o Mandai Chowk, Paranda,  
Tq. Paranda, Dist. Osmanabad.

Versus

1. The State of Maharashtra  
Through Police Station Paranda,  
Tq. Paranda, Dist. Osmanabad.
2. Ataur Raheman Khaja Saudagar  
Age: 52 Years, Occu: Social Worker,  
R/o Nalsab Galli, Behind old Tahsil Office,  
Paranda, Tq. Paranda, Dist. Osmanabad. ..Respondents  
(Res. No.2. Orig. Complainant)

...  
Mr. H. I. Pathan, Advocate for the Applicants.  
Mr. A. V. Lavte, APP for Respondent No.1.  
Mr. P. S. Chavan, Advocate for Respondent No.2.

...  
**CORAM : SMT. VIBHA KANKANWADI AND  
S. G. CHAPALGAONKAR, JJ.  
DATED : 10<sup>th</sup> SEPTEMBER, 2024.**

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

1. The applicants have approached this Court under Section 482 of the Criminal Procedure Code praying to quash FIR in Crime No.242/2020 dated 10.10.2020 registered with Paranda Police Station, District Osmanabad for the offences punishable under Sections 120-B, 420, 467, 468, 471 r/w 34 of the Indian Penal Code as well as criminal proceeding in RCC No.130/2022 pending before Judicial Magistrate First Class at Paranda.

2. The respondent no.2 lodged FIR dated 10.10.2020 alleging that land bearing Survey No.235 admeasuring 26 acres 32 gunthas is in the possession of applicants as restricted owners. It was granted in favour of late Amin Khan Babalal Pathan under Section 6(3) of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 (for short 'Act of 1954') as restricted owners. The Amin Khan expired on 30.10.1971. In terms of condition of grants, there was restriction to transfer land by any mode like partition, sale etc. However, on death of Amin Khan, his sons namely Ayat Khan Amin Khan Pathan and Maheboob Amin Khan Pathan partitioned land amongst them and executed various sale deeds in favour of different persons. The transfers are without obtaining necessary permission from the Collector and in contravention of condition of grants under order dated 12.04.1971. It is further alleged that the aforesaid transactions are made by manipulation of office record. Consequently, loss is caused to the Government and purchasers of

lands. It is further alleged that constructions are raised by accused persons without obtaining permission from the Municipal Council, ignoring reservation under development plan. It is, therefore, alleged that applicants/accused have committed offences under Sections 120-B, 420, 467, 468, 471 r/w 34 of the Indian Penal Code.

3. In pursuance of aforesaid FIR the investigation progressed and charge-sheet has been filed against applicants for offences punishable under Sections 420 r/w 34 of the Indian Penal Code. The gist of the charge-sheet states that although land Survey No.235 was granted under Section 6(3) of the Act of 1954 as restricted owner, subsequently same has been shown as land of Class-I occupancy. The manipulated Mutation Entry No.679 was entered in the name of late Amin Khan. Later on Mutation Entry No.729 certified in the name of his heirs and thereafter, without obtaining necessary permission for transfer of land, sale deeds have been effected. The valuation of land is about Rs.5 crores and 50% amount is chargeable for conversion of Class-II land to Class-I land. However, without such conversion, the land has been falsely shown as Class-I occupancy and transfers have been effected by accused persons, so also constructions have been raised without permission from Municipal Council. Consequently, offences under Sections 420 r/w 34 of the Indian Penal Code alleged to have been committed by accused persons.

4. Mr. Pathan, learned Advocate appearing for applicants submits that applicants had received land as legal heirs of original grantee under the Act of 1954. He would submit that since beginning land was Class-I occupancy and there was no restriction for transfer. He would submit that if there is violation of condition of grants as alleged, the appropriate action can be taken under the

provisions of the said Act. However, no case for prosecution for offence under Section 420 of the Indian Penal Code can be made out against applicants. He would further submit that first informant is unconcerned with land in question. He had filed an application under Section 156(3) of the Criminal Procedure Code. The FIR has been registered in pursuance of directions given by the learned Magistrate. According to Mr. Pathan contents of FIR or material in the charge-sheet is bereft to make out any offence against applicants. He would, therefore, urge that FIR and consequential criminal proceeding be quashed and set aside.

5. Per contra, Mr. Lavte, learned APP appearing for the State and Mr. P. S. Chavan, learned Advocate appearing for respondent no.2 vehemently opposed the prayers in the application. They would submit that criminal law can be set in motion by any person. The order passed by the learned Magistrate for registration of FIR is not challenged by applicants. In pursuance of FIR, investigation progressed. The material collected during the investigation is sufficient to make out offences under Sections 420 r/w 34 of the Indian Penal Code. Mr. Chavan would point out that grant of land in favour of late Amin Khan was under Section 6(3) of the Act of 1954 with specific condition that he has no transferable rights. He shall not entitle for partition or distribution of land. According to him, initial entry in 7/12 extract in the name of late Amin Khan clearly stipulates that he was restricted owner. However, while mutating name of legal heirs, note regarding restricted ownership has been removed in collusion with Revenue Authorities. Subsequent transfers of land without obtaining permission from competent authorities and deposit of Nazarana for conversion of land in Class-I occupancy would amount to cheating to attract penalty under Sections 420 r/w 34 of the Indian Penal Code.

6. We have considered submissions advanced by the learned Advocates appearing for respective parties. The applicants seek to invoke jurisdiction of this Court under Section 482 of the Criminal Procedure Code. The parameters for exercise of powers under Section 482 are laid down by Supreme Court of India in various judgments. Although such powers are wide enough, the exercise of such powers can be resorted in exceptional circumstances, as elaborated in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***<sup>1</sup>. It has been elaborated by the Supreme Court of India that powers are to be sparingly used where contents of FIR are bereft to make out any offence or when criminal prosecution would result into abuse of process of law.

7. A careful scrutiny of contents of FIR would show that land Survey No.235 admeasuring 26 acres 32 gunthas was re-granted in favour of late Amin Khan Babulal Pathan under Section 6(3) of the Act of 1954. The certificate/agreement of allotment, which is available on record clearly demonstrate that late Amin Khan being possessor of land, conferred with occupancy rights as stipulated under Section 6(3) of the Act of 1954 subject to condition that he shall not transfer the land without permission of the Collector and shall pay land revenue. Apparently, certificate of grant dated 12.04.1971 in the name of late Amin Khan shows that land was granted to him as Class-II occupancy. The Mutation Entry No.679 clearly depicts that name of late Amin Khan was entered as restricted owner. Thereafter, on death of Amin Khan names of his legal heirs were recorded. Thereafter, several transfers are made by the applicants. *Prima facie*, the contents of the charge-sheet suggests that there is no document of conversion of the land from Class-II to Class-I occupancy. There is no record to show as to how entry regarding restricted ownership has been converted into

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<sup>1</sup> AIR 1992 SC 604.

Class-I occupancy. There is no record to show that Nazarana is paid for such conversion. The FIR and charge-sheet alleges that applicants have manipulated the record in collusion with Revenue Authorities to convert nature of ownership from Class-II to Class-I occupancy and effected transfers in favour of several persons. *Prima facie*, this Court finds triable case against applicants. Hence, this is not a fit case to exercise jurisdiction under Section 482 of the Criminal Procedure code.

8. Consequently, Criminal Application stands rejected.

**(S. G. CHAPALGAONKAR)**  
**JUDGE**

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**