



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3554 OF 2023

Nagesh s/o Govindrao Deshmukh

... APPLICANT

VERSUS

1. The State of Maharashtra
P.I. Bhagyanagar Police Station,
Nanded, Dist. Nanded

2. Sow. Shashikala Vyankatrao Pallegad

... RESPONDENTS

...

Advocate for Applicant : Mr. Deshpande Gaurav L.

APP for respondent/State : Mr. G.A. Kulkarni

Advocate for respondent No.2 : Mr. Amol N. Patale

...

WITH

CRIMINAL APPLICATION NO.3504 OF 2019

1. Sau. Madhuri w/o Madhav Bondle

2. Madhav s/o Maroti Bondle

3. Dnyanoba s/o Narhari Panchal

... APPLICANTS

VERSUS

1. The State of Maharashtra
through Bhagyanagar Police Station,
Nanded, Dist. Nanded

2. Shashikala w/o Venkatrao Pallegad

... RESPONDENTS

...

Advocate for Applicant : Mr. Shirsat Suhas R.

APP for respondent/State : Mr. G.A. Kulkarni

Advocate for respondent No.2 : Mr. Amol N. Patale

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**Reserved on : 21.02.2024
Pronounced on : 23.02.2024**

JUDGMENT (MANGESH S. PATIL, J.) :

Leave granted to correct the name of respondent No.1 in Application No.3554/2023. Heard. Rule. Rule is made returnable in both the applications. At the joint request of the parties, the matters are heard finally at the stage of admission.

2. By way of these two separate applications under Section 482 of the Code of Criminal Procedure, four accused who have been roped in crime bearing FIR No.243/2019 registered at Bhagyanagar Police Station, Nanded Dist. Nanded for the offence punishable under Section 409, 420, 467, 468, 471, 323, 504, 506 read with Section 34 of the Indian Penal Code, are seeking quashment of the Crime, the charge-sheet bearing No.91/2020 and the consequent Regular Criminal Case No.501/2020 pending on the file of Judicial Magistrate First Class, Nanded.

3. The sum and substance of the allegations, as can be discerned from the charge-sheet, are to the effect that plot No.10 of Pushpa Nagar Nanded was jointly purchased by the applicant Madhuri Madhav Bondle and the respondent No.2, by a registered sale deed dated 07.12.1994. The deficit stamp duty was also subsequently paid on 30.03.2010. It is alleged by the respondent No.2 that in spite of being aware that the plot was of joint ownership, accused Madhuri executed a

false power of attorney in the name of her husband Madhav who is also an accused and one of the applicants, and obtained a Gunthewari certificate from the Municipal Corporation only in the name of applicant Madhuri. It is thus alleged that with a view to appropriate the entire plot to themselves applicants Madhuri and Madhav indulged in preparing a false document and obtained a Gunthewari certificate of the entire plot and thereby cheated the respondent No.2. The rest of the two applicants acted as attesting witnesses to the power of attorney executed by applicant Madhuri in favour of applicant Madhav.

4. The FIR thereafter alleges that there was an amicable settlement due to intervention of the relatives between that couple and the respondent No.2 on 17.02.2019. The couple agreed to sell half share of the plot to the respondent No.2 for consideration of Rs.12,00,000/- and even agreed to execute the release deed/sale deed. On the very next day the respondent No.2 paid an amount of Rs.6,00,000/- to the couple and the sale deed was agreed to be executed within five months.

5. It is then alleged in the FIR that on 16.07.2019 when the husband of respondent No.2 approached the couple and requested for executing the sale deed by receiving the balance amount of the consideration, the couple abused and threatened him and drove him out of the house.

6. The learned advocates for the applicants would submit that

accepting the allegations in the FIR at their face value, they fall short to make out all the ingredients for constituting the offences for which the applicants are being made to face the prosecution. It is purely a civil dispute. Even if the power of attorney was executed by applicant Madhuri in the name of her husband Madhav, for regularization of the purchase, merely obtaining a Gunthewari certificate would not have changed the title. There are no allegations about the applicants thereafter having made any attempt to dispose of the plot or create any third party interest. Rather the respondent No.2 agreed to purchase the remaining half share from applicant Madhuri, paid the part of consideration which, however, could not fructify and culminate in actual transaction. It would be a matter of civil dispute and the respondent No.2 at the most would be entitled to resort to a civil remedy for specific performance. A civil dispute has been robed in criminal form and it would be abuse of the process of law to make the applicants face the prosecution.

7. The learned advocate Mr. Shirsat would further submit that in fact applicant Madhuri had filed Regular Civil Suit No.79/2019 in the Court of Civil Judge, Junior Division at Nanded on 25.02.2019 seeking a declaration that she was the absolute owner of the entire plot No.10 and for recovery of possession. It is thereafter that the respondent No.2 has lodged the FIR as a counter blast and to pressurize the couple.

8. The learned APP and the learned advocate for the respondent No.2 and the latter by referring to the affidavit-in-reply, would strongly oppose the applications. They would submit that admittedly, under the sale deed of the year 1994 the plot was purchased jointly in the name of applicant Madhuri and the respondent No.2 still, in order to appropriate the entire property, applicant Madhuri and her husband Madhav prepared a false power of attorney, attested to by the other two applicants and were successful in obtaining the Gunthewari certificate for regularization of the title in the sole name of the applicant Madhuri. This in itself is indicative of the sinister design of the couple. It would constitute cheating and misappropriation. Opportunity needs to be extended to the prosecution to substantiate the charge. It is not a matter of false implication and the applications be rejected.

9. We have considered the rival submissions and perused the papers. A bare perusal of the allegations in the FIR coupled with the fact that admittedly the parties are before the Civil Court claiming title to the disputed plot makes it abundantly clear that the genesis of the dispute is essentially civil one. If applicant Madhuri through her husband applicant Madhav has already instituted a civil suit seeking a declaration about her title to the entire plot with a prayer for possession and the suit was filed in the month of February 2019 even before the FIR was registered in July 2019, in our considered view, it would be sheer abuse of the process of

law to allow the prosecution to go on. A civil dispute seems to have been made to appear as a crime, and in all probability, for the obvious reasons.

10. We are emboldened to observe that the circumstances are obvious for the reason that even the FIR itself mentions that the dispute between the two sides was sought to be settled due to the intervention of some relatives. The applicant Madhuri agreed to sell and the respondent No.2 agreed to purchase the half share from the plot for a consideration of Rs.12,00,000/-, half of the amount was paid and the sale deed was agreed to be executed within five months. If at all such is the state of affairs, as is being mentioned in the FIR, the circumstance would lend support to our inference that the dispute between the two sides is of civil nature and the FIR has been lodged for the obvious reasons.

11. Even if the applicant Madhuri had executed a power of attorney in favour of her husband applicant Madhav for regularizing the purchase under the relevant law by obtaining necessary certificate known as Gunthewari certificate from the Municipal Corporation, it would enure to the benefit of whoever is the owner of the property. Gunthewari certificate in itself cannot be regarded as a document of title particularly when admittedly there has been a registered sale deed jointly in the name of applicant Madhuri and the respondent No.2.

12. In view of above state of affairs, in our considered view, the fact situation of the matter makes it abundantly clear that none of the

ingredients for constituting the offences with which the applicants are being charged can be made out, even if the allegations in the FIR and the material collected by the investigating officer is accepted at its face value.

13. One can refer to and rely upon following observations from **Paramjeet Batra Vs. State of Uttarakhand; (2013) 11 SCC 673.**

Relevant paragraph reads as follows :

12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.

14. The case is squarely covered by the guidelines laid down in the matter of **State of Haryana and Ors. V/s Ch. Bhajan Lal and Ors.; (1992) SCC (Cri) 426.** It would be abuse of the process if the applicants are made to face the prosecution.

15. The applications are allowed. The crime bearing FIR No.243/2019 registered at Bhagyanagar Police Station, Nanded Dist. Nanded for the offence punishable under Section 409, 420, 467, 468,

471, 323, 504, 506 read with Section 34 of the Indian Penal Code and the charge-sheet bearing No.91/2020 and the consequent Regular Criminal Case No.501/2020 pending on the file of Judicial Magistrate First Class, Nanded are quashed and set aside.

16. The Rule is made absolute in the above terms.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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