



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

Criminal Application No. 3290/2018

Abdul Sattar Kadar Patel
Age : 80 years, Occupation : Agril,
R/o Takali Rajerai,
Tq. Khultabad, Dist. Aurangabad.

...Applicant

Versus

1. The State of Maharashtra
Through Police Inspector,
City Chowk Police Station,
District Aurangabad.
(Copy to be served on public Prosecutor
at High Court Bench at Aurangabad.)

2. Laddu @ Masood Mohammad Ismail Patel
Died through LR's.

Shafiq s/o Laddu @ Masood Patel
Age : 29 years, Occ. Agril
R/o Takali Rajerai,
Tq. Khultabad, Dist. Aurangabad.

...Respondents

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Advocate for Applicant : Mr. Kiran Jadhav

APP for the Respondent No.1/State : Ms. R.R. Tandale

Advocate for Respondent No.2 : Ms. Roopa V. Daxini

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

**RESERVED ON : 1 APRIL 2024
PRONOUNCED ON : 19 APRIL 2024**

FINAL ORDER [Per Shailesh P. Brahme, J.] :

. Heard both the sides finally at the admission stage.

2. Applicant is seeking quashment of First Information

Report bearing C.R. No.0255/2018 registered with City Chowk Police Station, Aurangabad for offences punishable under Sections 420, 467, 468, 471 read with 34 of the Indian Penal Code, consequential charge-sheet and R.C.C. No.2547/2021 pending before the Judicial Magistrate First Class, Aurangabad.

3. Impugned offence was registered against nine persons including the applicant. Except applicant, all other accused are dead. The respondent no.2/informant has also died.

4. Respondent no.2 lodged report on 15.09.2018 with the concerned Police Station alleging that his uncle late Mr. Majid Raj Mohammad was the owner of land Gut No.610 situated at Rajerai Takli, Taluka Khuldabad, Dist. Aurangabad. His uncle was issue-less and was having two wives. He was undergoing medical treatment in the hospital at Aurangabad from 16.04.1991 to 08.05.1991. He was an indoor patient. He was operated on 27.04.1991 and as such was not permitted to go outside the hospital. Later on he died on 25.05.1991. It is alleged that the applicant entered into an agreement to sell with deceased uncle, on 28.03.1991. Two stamp papers were procured on holidays. Third stamp paper was purchased on 30.03.1991.

5. It is further alleged that agreement to sell is shown to have been executed on 28.03.1991 on the stamp paper. A payment

receipt is shown to have been executed on 28.04.1991. Thereafter by using third stamp paper, a will is shown to have been executed on 30.03.1991 which was subsequently registered on 04.07.1991. Thus the applicant in connivance with other accused grabbed the land of deceased uncle by forging the agreement of sale, the payment receipt and the will. It is further alleged that R.C.S. No.7/2012 was filed by applicant on the basis of forged documents. It was dismissed on 24.04.2018. Civil Court also cast doubt about the documents. Accused are alleged to have deceived the heirs of the deceased for Rs.30 Lakhs and deprived them of the property.

6. An investigation was conducted. Charge-sheet was filed against ten persons on 05.03.2021. Presently the applicant is facing prosecution in R.C.C. No.2547/2018 which is pending before the J.M.F.C. Aurangabad. By the passage of time, all the accused persons except present applicant have died. The allegations against the applicant pertain to forgery of three documents namely the agreement to sell, the payment receipt and the will and that of using them to cheat.

7. Learned Counsel for the applicant submits that there is gross delay in registering F.I.R., from transaction of agreement to sell which occurred on 28.03.1991. The witnesses to the documents in question are not alive. He would submit

that the dispute is civil in nature which is draped in the form of criminal proceedings. It is further submitted that no incriminating material have been collected during the course of investigation indicating forgery of the documents. There are no independent witnesses. Due to the passage of time, it would be impossible to prove the guilt of the applicant for want of incriminating material. Lastly, it is submitted that it is an abuse of process of law to proceed against the applicant.

8. Learned APP and learned Counsel for the respondent no.2 would oppose the submissions of the applicant. They submit that while dismissing suit, Civil Court also recorded finding that the transaction and documents are suspicious. They would point out that on 28.03.1991 no agreement could have been executed because deceased was ailing. He was operated and he was not permitted to leave hospital. It is further submitted that there are statements of the witnesses and documents collected during the course of investigation to point out involvement of the applicant. They would submit that the prosecution cannot be aborted at this stage.

9. We have considered rival submissions of the parties. We have gone through the papers of investigation. Learned APP has informed that the suspected documents have not been referred to any hand-writing expert. It is undisputed that applicant had

filed Regular Civil Suit No.7/2012 for specific performance of contract. It was dismissed on 24.04.2018.

10. It is the case of the prosecution that agreement was executed on 28.03.1991, payment receipt was executed on 28.04.1991 and will was executed on 30.03.1991. All these documents bear signature of deceased uncle of the informant. These documents bear signatures of the witnesses. At the time of registration of will on 04.07.1991, attesting witnesses on the will were verified. The statements to that effect were recorded in the presence of Sub-Registrar. There is no dispute that the witnesses who have signed on above documents are not alive. No statements of any of the witnesses to the documents are recorded.

11. The alleged transaction was entered before 30 years. Though informant was making complaints in writing to the police, FIR was registered on 15.09.2018. Papers of investigation disclose that only three statements of Nazeer, Zaheer and Naeem were recorded. These three persons are the nephews of the deceased. It is a case of the prosecution that deceased was hospitalized and unable to execute the agreement. The statement of the medical practitioner in whose hospital, deceased was indoor patient, has not been recorded. The agreement to sell was executed prior to hospitalization.

12. It is candidly submitted by the learned APP that no endeavour has been made to refer forged documents to the hand-writing expert alongwith admitted signatures of the deceased. No expert opinion is solicited in the matter in spite of the main allegations pertain to forgery. The will was executed on 30.03.1991, but it was registered on 04.07.1991 after the death of deceased. No statement of the registering officer has been recorded. Pitted with this material, we have no iota of doubt that to proceed against the applicant would be futile exercise.

13. There is no material against the applicant to indicate forgery or cheating. Except three interested witnesses, no independent material is collected during the investigation. Therefore, after lapse of thirty years from the date of transaction in question, it would be abuse of process of law to proceed further against the applicant.

14. Learned Counsel for the respondent no.2 has submitted that there are findings recorded by the Civil Court casting doubt about the documents. Investigating Officer has collected information from the medical practitioner indicating that deceased was indoor patient. These instances though indicate mala fides of the applicant or doubts his conduct, are not sufficient to make out offence of forgery or cheating alleged

against him. The investigation in this regard is perfunctory and that too, because of belated registration of FIR. Learned Counsel for the applicant is right in submitting that it would be abuse of process of law to proceed against applicant. The present case is squarely covered by the parameters laid down in the matter of **State of Haryana and Ors. Vs. Bhajan Lal and Ors.**, AIR 1992 SC 604 for exercising our jurisdiction under Section 482 of the Code of Criminal Procedure.

15. For the reasons stated above, we find the criminal proceedings are liable to be quashed. We, therefore, pass following order:

ORDER

(i) The Criminal Application is allowed.

(ii) First Information Report bearing C.R. No.0255/2018 registered with City Chowk Police Station, Aurangabad for offences punishable under Sections 420, 467, 468, 471 read with 34 of the Indian Penal Code, consequential charge-sheet and R.C.C. No.2547/2021 pending before the Judicial Magistrate First Class, Aurangabad are quashed and set aside.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]