

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.979 OF 2022

Babu Rama Rathod & Ors.

...Applicants

Versus

The State of Maharashtra and Anr.

...Respondents

....

Mr. Ashok B. Tajane a/w Mr. Yuvraj A. Tajane, Advocate for the Applicants.

Mr. Vishwanath Patil, Advocate for Respondent No.2.

Mr. A.S. Shalgaonkar, APP for the Respondent No.1 – State.

Mr. Pradip Mahadeo Bansode (H.C.), Solapur Taluka Police Station, Solapur Rural, present.

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**CORAM : PRAKASH D. NAIK, &
N. R. BORKAR, JJ.**

DATE : 23rd APRIL, 2024.

P.C.:

1. The applicants are challenging the First Information Report (for short “FIR”) dated 02.05.2018 and the charge-sheet filed against them on completion of investigation by invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure.

2. The case of the prosecution in nutshell is as follows:

i) The complainant/Respondent No.2 owns agricultural

land situated at Gat Nos.84/1, 2, 3 & 4 in Village Doddi. He had purchased the said property from Vidyadhar Balgi and his family in 2016 by executing valid Sale Deed. He is in possession of the land. 7/12 extracts are in the name of complainant.

ii) Dagdu Rama Rathod was interested in purchasing the said property. Since Vidyadhar Balgi did not sell the said land to him, Dagdu Rathod, his brother Babu Rathod, Rekhu Rathod, Umesh Rathod, Vikas Chavan and their sons were abusing and threatening complainant.

iii) The accused had prepared false document claiming issuance of Isar Pavti for amount of Rs.20 Lakhs by forging signature of Vidyadhar Balgi. Accused Vikas Arjun Chavan, Dagdu Rama Rathod, Babu Rama Rathod, acted in connivance with each other and submitted the fabricated documents in the Court proceedings.

iv) On 2nd May 2018, the complainant, Sameer Mujawar and Mahesh Awate had visited the agricultural land. Babu Rama Rathod, Rekhu Rama Rathod, Pravin Rathod, Mahesh Babu Rathod, Akshay Dagdu Rathod, Kiran Dagdu Rathod, Vikas Arjun Chavan came to the said spot along with 4 to 5

relatives. They were armed with weapons like axe and chopper. They obstructed the complainant and his associates. He was threatened and told to vacate the custody of the plot. The complainant told them that they have no right in the property. The accused charged at him. He was assaulted with bamboo stick, fist and kick blows. Thereafter the accused ran away from the spot.

3. Offences were registered under Sections 363, 143, 147, 148, 149, 447, 427, of IPC and Sections 135 of Bombay Police Act.

4. During the course of investigation statements of witnesses were recorded. On completing investigation, charge-sheet was filed.

5. Learned Advocate for the Applicants Mr.Tajane submitted that the entire case is based on the concocted version of complainant. The FIR was registered out of vendetta. The attempt is to pressurise the accused. Although it was alleged that some of the accused were armed with weapons, there is no recovery of weapons. There is no corroborative evidence to support the version of complainant. The complainant is the purchaser of the plot. He is acting at the behest of Vidyadhar Balgi. The owner of property had entered into transaction with the accused. Isar Pavti was

executed in 2014. Amount of Rs.20 Lakhs was paid to the complainant. *Lis pendens* was registered by the accused with regards to the said property. Notice was published in the newspaper. Suit is filed by the Applicant No.7. One of the Applicants is aspiring to join the Police Department. Another Applicant is Assistant Sub Inspector in the Police Department and one of them had retired from the Police Department. The allegations of assault are not supported by any medical evidence. The registration of FIR suffers from malafide. There is no evidence in the charge-sheet to substantiate the charges.

6. Learned A.P.P. and learned Advocate for Respondent No.2 submitted that the version of complainant cannot be disbelieved at this stage. Prima facie case is made out in the FIR. The Isar Pavti is fabricated document. It has been created to support the claim of the Applicant No.7. The accused have no right in the property. The property is sold to the complainant. Sale Deed has been executed. 7/12 extract is in the name of the complainant. Specific role has been attributed to all the accused. They gathered at the scene of offence. They were carrying weapons and bamboo sticks. The accused have assaulted the complainant and others by bamboo sticks and by fist and kick blows. The grounds urged by the

Applicants are based on disputed question of fact. The application is devoid of merits and deserves to be dismissed.

7. We have perused the documents on record. The alleged incident had occurred on 02.05.2018. The complainant claims to have purchased the subject property from Vidyadhar Balgi. The allegations that some of the accused were armed with weapons is apparently exaggerated by the complainant. Undisputedly it is the case of complainant or any of the witnesses is that the accused had used the weapons in assaulting the complainant or any other person. It is alleged that the accused had assaulted the complainant and others with bamboo stick/fist kick blows. There is no recovery of bamboo sticks. There is no recovery of any weapons referred to by the complainant. There is no medical evidence to corroborate the version of complainant. The accused had claimed that there was transaction between the owner of the property and the accused. According to the accused, Isar Pavti was executed on 17.07.2014 by Vidyadhar Balgi. It was in respect to Gat No.84/1, 84/2, 84/3, 84/4 admeasuring 7 Hector, 28 R. It was agreed to sell to the accused. Isar Pavti provides all the details of the transaction and terms and conditions and factum of payment of Rs.20 Lakhs as earnest money. Applicant No.7 had shown willingness to purchase

the said land. There was negotiation between them. It was decided to sell the land at the consideration of Rs.1,62,00,000/-. According to the accused the owner agreed to clear the encumbrances. Isar Pavti has been annexed to this application. Applicant No.7 issued public notice dated 26.09.2024 in newspaper stating that Kalyanrao Balgi has executed Isar Pavti dated 17.07.2014 after deliberation with the mediator for himself. Applicant No.7 came to know from his sources that Balgi Family is selling the property to third party. Notice was issued stating that Applicant No.7 is ready to pay the agreed amount. No transaction in respect to the said properties is to be entered with Kalyanrao Balgi. On 06.10.2014 one Baburao Rathod gave response to the notice dated 26.09.2014 published in daily newspaper issued by Applicant No.7. The suit was filed by Applicant No.7 before the Civil Judge Senior Division, Solapur. Balgi filed private complaint against applicant No.7. *Lis pendens* was registered by the Applicant No.7 on 22.08.2016. The property was apparently sold to another person. The Applicants contend that the said transaction was executed after the execution of Isar Pavti with Applicant No.7. Another FIR was registered on 26.08.2016 by Appasaheb Kashinath Jeure, who was purportedly at the agricultural land at the instance of purchaser. The transaction

between Mr.Balgi and the first informant in this case was after the alleged transaction of Isar Pavti with Applicant No.7. No doubt the purchaser of the original owner of the property are disputing the execution of Isar Pavti. However, the FIR is registered out of vendetta. It suffers from malafides. In the case of **State of Haryana and others Vs. Bhajan Lal and others**¹, the Apex Court had set out by way of illustration, the broad categories of cases in which the inherent power under Section 482 of Code of Criminal Procedure could be exercised. The FIR in this case is attended with malafides. Considering the aspects of this case, we are inclined to quash the impugned proceedings.

ORDER

- i) Criminal Application No.979 of 2022 is allowed and disposed off;
- ii) Criminal Proceedings in R.C.C. No.421 of 2020 pending before the Court of learned J.M.F.C. Solapur arising out of FIR dated 02.05.2018 bearing C.R. No.290 of 2018 is quashed and set aside.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)

¹ (1992) Supp (1) SCC 335