

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

CRIMINAL APPLICATION NO. 26 OF 2014

Mr. Sunil Mohan Joshi

Age: 42 Years, Occ: Business

R/a: 701, Mata Vaishnavi Building,

Vaibhav chowk, Tembhipada,

Bhandup (West), Mumbai 400 078

.. Applicants/
(Original Accused)

Vs.

1. The State of Maharashtra

(At the Instance of Senior P.I.

Bhandup Police Station)

2. Mr. Sushil Hanumant Pednekar

Age: 42 yrs, Occ: Service

R/a: Room No. 18, Mishra Kunj Chawl,

Satyam Shivam Sundaram C.H.S. (Poposed)

Vaibhav Chowk, Tembhipada road,

Bhandup (West) Mumbai 400 078

.. Respondents
(Respondent No.2-
Org. Complainant)

Mr. Niranjana Mundari a/w Mr. Keral Mehtra for Applicant.

Ms. Mahalakshmi Ganpathy APP for State.

CORAM : A. S. GADKARI AND

SHYAM C. CHANDAK, JJ.

RESERVED ON : 30th NOVEMBER, 2023.

PRONOUNCE ON : 8th JANUARY, 2024.

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JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) Present Application filed under Section 482 of the Code of

Criminal Procedure, 1973, seeks quashing of the F.I.R. being C.R. No.375 of 2013, registered on 28th November, 2013 with Respondent No.1-*Bhandup* Police Station, for the offences punishable under Sections 420, 465, 467, 468, 471 and 476 read with 34 of the Indian Penal Code, 1860. Respondent No.2 has opposed the application by his affidavit-in-reply.

2) Heard Mr. Niranjana Mundargi along with Mr. Keral Mehtra for the Applicant and Ms. Mahalakshmi Ganpathy, learned APP for Respondent-State. Perused the record. Though served, none appeared for Respondent No.2 when the Application is taken up for final hearing.

3) Record of the Application shows that, ad-interim relief was granted on 10th March, 2014 whereby Respondent No.1 was directed to complete the investigation, but not to file charge-sheet. Thereafter, VP for Respondent No.2 and his affidavit-in-reply were filed. The Rule was issued on 4th January, 2017 and the interim relief was continued.

4) The impugned F.I.R. has been registered on a report filed on 28th November, 2013 by Respondent No.2 wherein he narrated that, he and others residing at plot No.59, Vaibhav Chowk, have submitted a proposal under the SRA Scheme. In the year 1998, the Applicant submitted a proposal for approval to develop plot No.60 under the SRA Scheme. Said project was outcome of the transaction between one Pravinsingh s/o. Bharatsingh Thakur and the Applicant. For that project, the LOI was issued in the year

1999. Thereafter, the Applicant constructed one building on the said plot. However, since beginning the Applicant did not construct necessary protection wall to the four sides of the said plot by leaving requisite 5 feet space (from the boundary of the adjacent plot No.59). As a result, the built up/carpet area of the proposed residential society of Respondent No.2 and his co-occupants would be reduced, for which the project was already submitted in the year 2001. Therefore, Responded No.2 and others filed complaints against the Applicant with various agencies of the Government, but it was in vain. Meanwhile, the Applicant continued with his construction. Hence, copies of the documents of the project submitted by the Applicant were obtained under the RTI. It revealed that the Agreement to Sale of the plot No.60, dated 28th July, 1998, between the Applicant and Pravinsingh and the Power of Attorney dated 19th March 1999, allegedly executed by Bharatsingh Thakur in favour of Pravinsingh, are bogus, because the former, who was owner of the plot No.60 under development, had already expired on 5th April 1997. Hence, the police registered the impugned F.I.R. against the Applicant.

4.1) According to the applicant, he has been falsely implicated in the F.I.R. Hence, this application.

5) Learned counsel for the Applicant submitted that both the plots Nos.59 and 60 were owned by Bharatsingh. Initially, the Applicant and

Pravinsingh had entered into an Agreement to Sale dated 30th September 1995 for plot No.60, at Bhandup. At that time, Pravinsingh represented to the applicant that, he is Power of Attorney of his father Bharatsingh. In that capacity, Pravinsingh had executed various documents before various Authorities to enable the Applicant to develop the plot No.60. Meanwhile, the land prices increased, therefore, Pravinsingh and some other members of his family asked for a higher consideration. The Applicant agreed for that and entered into a new Agreement to Sale dated 10th July 1998 again on the same representation that Pravinsingh was the Constituted Attorney of Bharatsingh. At this point of time, the Applicant was completely unaware of the fact that, Bharatsingh had passed away on 5th April 1997 and hence the Power of Attorney in favour of Pravinsingh is invalid. Thereafter, the Applicant received requisite permission for development of the said plot. Later on, sometime in July 2012, the Applicant realized that the said Power of Attorney is invalid. Therefore, the Applicant asked Pravinsingh and other members of Bharatsingh's family to provide him a Succession Certificate of Bharatsingh. However, Pravinsingh demanded Rs.50,00,000/- from the Applicant. Hence, the Applicant filed a complaint against him at Bhandup Police Station, but its cognizance was not taken. The Applicant also sent a notice dated 26th June, 2013 to Pravinsingh and other members of Bharatsingh's family and called upon them to execute a Deed of Conveyance.

Finally, Pravinsingh and all other legal heirs of Bharatsingh executed a Development Agreement dated 01st August, 2013. So far, huge amount has been paid to Pravinsingh and the other legal heirs. Moreover, Pravinsingh recorded a letter dated 01st August, 2013 to City Survey Officer, Mulund stating that the dispute with the Applicant has been resolved. Its copy is marked to Bhandup Police Station. As such, the offences alleged against the Applicant are not made out.

5.1) Learned counsel for the Applicant submitted that, on 4th February, 2023, the members of the society formed on plot No. 60 filed a complaint against the builder, who is developing plot No.59. This complaint is for obstructing the Applicant and his workers as they did not meet undue demands of the said builder. Thus, it is clear that the impugned F.I.R. has been filed just to harass and pressurize for undue concessions from the Applicant and smacks with mala fide. Therefore, the F.I.R. may be quashed.

6) As against this, learned APP vehemently submitted that the Affidavit-in-Reply of Respondent No.2 coupled with the statement of Pravinsingh recorded by the Police, gives the relevant details as to how the Applicant prepared false and bogus Agreement to Sale dated 10th July, 1998 and the Power of Attorney dated 11th August, 1999. Thus, it corroborates the case of prosecution stated in the impugned F.I.R. In short, the statement of Pravinsingh clearly shows that he did not sign the said Agreement to Sale.

Since Bharatsingh expired in 1997, question does not arise of he giving the subject Power of Attorney to Pravinsingh. The Applicant also used the forged documents as genuine. Thus, there is a *prima facie* case against the Applicant of having committed the offences stated in the F.I.R. Therefore, the Application may be rejected.

7) Looking at the rival submissions, the statement of Pravinsingh enclosed with the Affidavit-in-Reply is significant. The said statement clearly shows that, in the year 1995, Pravinsingh had executed the Agreement to Sale of plot No.60 with the Applicant. Even though Pravinsingh claims that the Agreement to Sale dated 10th July, 1998 and the Power of Attorney dated 19th July, 1999 are forged and bogus, the bank account statement of Applicant and statement of Pravinsingh makes it evident that till 23rd May, 2013, Pravinsingh and other legal heirs of Bharatsingh received considerable amount from the Applicant towards the said Agreement to Sale. However, Pravinsingh has not explained as to why he and other legal heirs accepted the money from time to time even though the said documents were forged and he had complained against the said forgery earlier and also on 24th November, 2012. Similarly, in his statement Pravinsingh did not explain as to why he allowed the Applicant to complete the construction of one building on the disputed plot No.60. Such an explanation was needed particularly when Pravinsingh had not executed the Agreement to Sale, as alleged.

8) The impugned F.I.R. indicates that there was dispute between Respondent No.2 and the Applicant on account of the boundary of the Plot Nos. 59 & 60. The record indicates that, after executing the initial Agreement to Sale, dispute occurred between the Applicant, Pravinsingh and other legal heirs on account of the consideration of plot No.60. Hence, they filed report against each other. Later on, they settled that dispute amongst them. Hence, Pravinsingh and said legal heirs executed the development agreement with the Applicant in August-2013 and allowed him to construct one building on plot No.60. The said construction caused annoyance to Respondent No.2. By that time, Pravinsingh and other legal heirs of Bharatsingh had settled the dispute with the Applicant. As such, Respondent No.2 was constrained to lodge the impugned F.I.R. with *mala fide* intention to cause undue harassment to the Applicant and for other extraneous reasons.

9) Thus, the prosecution instituted by Respondent No.2 is malicious and continuation of the same would amount to abuse of process of law. As held by the Hon'ble Supreme Court in the case of *State of Haryana & Ors. Vs. C.H. Bhajanlal & Ors.*, (AIR 1992 page 604:1992 SCC (Suppl.) (1) 335), the extraordinary powers under Article 226 of the Constitution of India or the inherent powers under Section 482 of Cr. P.C. could be exercised, "*Where criminal proceeding is manifestly attended with mala fide*

and/or where the proceedings manifestly initiated with ulterior motive for breaking vengeance on the accused and with a view to spite him due to private and personal grudge”.

10) In view thereof, the impugned F.I.R. deserves to be quashed and is accordingly quashed and set aside.

10.1) The Criminal Application No.26 of 2014 is allowed in the aforesaid terms. Rule is made absolute.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)