

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 920 OF 2015**

- 1) Mohan Velji Patel,
Aged 68 years, Occupation-Business,
residing at 1301 Kalindi,
Neelkanth Valley Rajawadi, Road No.7,
Ghatkopar (East), Mumbai – 400 077.
 - 2) Mukesh Mohan Patel,
Aged 47 years, Occupation-Business,
residing at 1301 Kalindi,
Neelkanth Valley Rajawadi, Road No.7,
Ghatkopar (East), Mumbai – 400 077.
 - 3) Neelkanth Mansions and
Infrastructure Pvt. Ltd.,
Company registered under the provisions of
the Companies Act, 1956 having
its registered office at 5th Floor,
Fine House, Anandji Lane,
Off M.G. Road, Ghatkopar (East),
Mumbai-400 077.
-Petitioners

Vs.

- 1) The State Of Maharashtra
(At the instance Sr. Inspector of
EOW, Unit No.9, Crawford
Mkt., Mumbai.

- 2) Jyothi Dinesh Parekh,
Aged... Years, Occupation-Business,
residing at Jivandas Bhanji Building,
6/A, Cama Lane, Ghatkopar (W),
Mumbai-400 055.

.....Respondents

Mr. Sanjog Parab, Senior Advocate a/w Adv. Mohan Rao, Adv. Sulabha V. Rane, Adv. Sangram Parab, Adv. Sanjeev Ahuja i/by Parab & Associates for the Petitioners.

Mr. J.P. Yagnik APP, for the Respondent No.1-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.
DATE : 27th FEBRUARY, 2024.**

ORAL JUDGMENT (PER- A.S. GADKARI, J.):

1) By the present Petition, Petitioners Accused in C.R. No.108 of 2014 dated 20th March, 2014 registered with Ghatkopar Police Station, Mumbai under Section 420 read with Section 34 of the Indian Penal Code (for short, "*IPC*") and subsequently registered as CR No.40 of 2014 with EOW, Mumbai have invoked jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (for short, "*the Cr.PC.*") for quashing of the said crime lodged by the Respondent No.2.

2) Heard Mr. Sanjog Parab, learned senior counsel for the Petitioners and Mr. Yagnik, learned APP for the Respondent No.1-State. Perused entire record produced before us.

3) Record indicates that, in the present Petition, by an Order dated 24th August, 2016, Rule was granted and by way of interim relief, it

was directed that, though the investigation of the crime shall continue, charge-sheet shall not be filed as against the Petitioners without the leave of the Court.

3.1) Record further indicates that, on 24th August, 2016 itself, Advocate on record for the Respondent No.2 had waived notice and thus the service of notice upon the Respondent No.2 is completed. Despite service, none appears for the Respondent No.2.

4) Petitioner No.3 is a company wherein the Petitioner Nos.1 and 2 are the Directors.

4.1) Perusal of record indicates that, Mr. Dinesh Parekh was the husband of Respondent No.2. He entered into an Agreement for purchase of a flat bearing No.1302 in the building known as “Indraprastha” in “*Neelkanth Valley*”, Ghatkopar (East), Mumbai (for short, “*suit flat*”). The said Agreement was executed on 12th September, 1990 before the Sub-Registrar, Kurla however, the said Agreement was not registered till 6th April, 2004. Total cost of consideration of the said suit flat was Rs.9 lacs and at the time of execution of said Agreement on 12th September, 1990, the husband of the Respondent No.2 had paid Rs.7 lacs and Rs.2 lacs were to be paid as balance amount.

4.2) By a subsequent Agreement dated 6th October, 1992, the husband of Respondent No.2 agreed to purchase four garages/open parking spaces at the rate of Rs.50,000/- per garage/open parking space, totalling

to Rs.2 lacs.

4.3) The said "*Indraprastha*" building situated in "*Neelkanth Valley*", Ghatkopar (East), Mumbai received Occupation Certificate from the Competent Authority on 5th May, 1994. The husband of the Respondent No.2 was informed about the same by the Petitioner No.3 by its letter dated 7th May, 1994 and requested him about the payment of arrears of consideration and other necessary payments as per the various clauses of Agreement dated 12th September, 1990.

4.4) The Respondent No.3 in due course and as per the terms and conditions of the said Agreement formed a Co-operative Society.

The late husband of Respondent No.2 did not join the said Society as its member, neither contributed the necessary charges for its formation and becoming a member of it.

4.5) Advocates/Solicitors of the Petitioners therefore issued a legal notice dated 10th September, 1999 to the late husband of the Respondent No.2 calling upon him to pay the balance amount in compliance with the Agreement dated 12th September, 1990. The compliance was part of obligation as per the terms and conditions of Agreement dated 12th September, 1990. The late husband of Respondent No.2 was specifically put on notice that, if he fails to comply with the requisition made in the said notice within a period of 15 days from the date of receipt of the said notice, the Petitioners would terminate the said Agreement and forfeit the earnest

money.

4.6) Petitioners also sent a legal notice dated 14th September, 1999 for termination of Agreement with respect to the four garages/open parking spaces.

The said notices were duly received by the late husband of Respondent No.2.

That, in the year 2004, the Government introduced amnesty scheme and therefore the late husband of Respondent No.2 got the said Agreement dated 12th September, 1990 registered on 6th April, 2004.

4.7) The Petitioners again issued notices dated 17th August, 2004 for termination of Agreement dated 12th September, 1990 and 6th October, 1992 for the suit flat and for said open parking spaces respectively, as the husband of Respondent No.2 did not pay the balance amount to be paid in furtherance of said Agreements.

4.8) Along with the said notice, the Petitioners also enclosed a cheque of Rs.6,38,401/- i.e. the balance amount which was to be refunded to the husband of Respondent No.2 after deducting the earnest money amount of Rs.1,35,000/-. The Petitioners also issued a notice of even date to the husband of Respondent No.2 for termination of Agreement pertaining to the four garages/open parking spaces.

Both the said notices were duly served and received by the late husband of Respondent No.2.

4.9) The husband of Respondent No.2 by its reply dated 24th September, 2004 denied the receipt of said legal notices issued by the Advocate for the Petitioners, however admitted the fact of receipt of a notice along with cheque of Rs.6,38,401/- dated 17th August, 2004. He contended that, he has made full payment towards consideration of the said suit flat, however the civil work inside the flat was not carried out as per his specifications and therefore he had a dispute on the same issue with the Petitioners. He also requested the Petitioners to avail the remedy of arbitration to resolve their differences and returned the said cheque of Rs.6,38,401/- with his said covering letter dated 24th September, 2004.

4.10) By letter dated 22nd November, 2004, the Petitioners denied the contentions of the husband of Respondent No.2 and again sent the cheque of Rs.6,38,401/- to him.

4.11) Admittedly and even as per the case of the Respondent No.2, her husband passed away on 26th January, 2012.

5) It is an admitted fact on record that, present crime is registered on 20th March, 2014 by the Respondent No.2. The fact upto sending of cheque of Rs.6,38,401/- with the Notice of termination dated 17th August, 2004 by the Petitioners has been accepted by the Respondent No.2 in her detailed complaint which was addressed to the police. She has given explanation for lodging the crime belatedly, as after the demise of her husband on 26th January, 2012 she along with her children were involved in

a family litigation regarding an illegal sale of her husband's 1/3rd share in the house and land where they were residing. After getting respite by an Order passed by this Court in an Appeal proceedings, she got some time to peruse and ponder upon the record and with the support of her son she decided to lodge present crime.

5.1) In her complaint, she had stated that, on 20th March, 2014, the market value of the suit flat as per the Ready Reckoner is of Rs.60 lacs. Therefore the Petitioners though accepted an amount of Rs.9 lacs in the year 1990, an act of cheating with her has been committed in the year 2014 for an amount of Rs.60 lacs i.e. the market value of the suit flat. It was her precise contention that, though her husband had paid the said amount of Rs.9 lacs from the year 1990 till 2004, the Agreement was not registered and therefore in this brief premise present crime is registered.

6) At the outset, it is to be noted here that, present crime is registered after a lapse of about 10 years from the date of issuance of notice of termination dated 17th August, 2004 by the Petitioners. It appears from the record that, the husband of Respondent No.2 was well aware of the fact that, he was also under legal obligations to perform his part of contract in furtherance of the said Agreement dated 12th September, 1990 and therefore by his communication dated 24th September, 2004, he had requested the Petitioners to have an amicable settlement in the matter. As noted earlier, the chronology of facts narrated in paragraph Nos. 4 and 5

are admitted facts on record and there is no dispute about it.

7) Apart from the delay in lodging the FIR, a judicial note has to be taken about the contents of first information report itself. The statement of Respondent No.2 is not recorded by the concerned Police Officer under Section 154(1) of Cr.P.C. However, her written complaint dated 20th March, 2014 which is in English language is treated as first information report, though the language of the State is Marathi. A minute perusal of the said first information report would clearly indicate that, it is drafted by a person, well conversant with legal niceties and with minute details, an elaborate complaint is submitted to the police.

A useful reference at this stage can be made to the decision of the Hon'ble Supreme Court in the case of *Iqbal alias Bala & Ors. Vs. State of Uttar Pradesh & Ors.*, reported in (2023) 8 SCC 734, wherein in paragraph Nos.9, 10 and 11, the Hon'ble Supreme Court has held as under:-

“9. At this stage, we would like to observe something important. Whenever an accused comes before the court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the court owes a duty to look into the FIR with care and a little more closely.

10. *We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.*

11. *In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”*

8) After taking into consideration the principles enunciated by the Hon'ble Supreme Court in the aforementioned decision, we have minutely

perused the contents of first information report and we find that, the observations made by the Hon'ble Supreme Court are squarely applicable to the case in hand.

8.1) The complainant herein (Respondent No.2) has ensured that, the averments made in the FIR/complaint are stated such that, it discloses the necessary ingredients to constitute the alleged offence. It clearly appears from the record that, due to passage of time, as the market value of the suit flat has increased as per her own statement, the complainant was prompted to file present crime, apparently for bringing the Petitioners across the table for settlement at her own terms. Even otherwise, perusal of the FIR would indicate that, no offence at all as contemplated under Section 420 read with Section 34 of IPC is made out.

9) The Petitioners never had any intention since inception to commit the act of cheating with the husband of Respondent No.2. The Petitioners have complied with all the necessary legal formalities and have followed the necessary legal provisions since the date of execution of Agreement dated 12th September, 1990 till its termination of their notice dated 17th August, 2004. It appears to us that, the Respondent No.1 police have unnecessarily registered the said crime without verifying the basic facts involved in it.

10) The Hon'ble Supreme Court in the case of *State of Haryana & Ors. Vs. Bhajan Lal & Ors. reported in 1992 Supp (1) SCC 335*, while

considering the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code enumerated various categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, in paragraph 102, sub-paragraph Nos.1 and 3 has held that:-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2)

(3) Were the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.”

11) In view of the above deliberation, according to us, the continuation of present crime will be a sheer abuse of process of law and it needs to be quashed. Therefore, CR No.108 of 2014 dated 20th March, 2014 registered with Ghatkopar Police Station, Mumbai and subsequently registered as CR No.40 of 2014 with EOW, Mumbai, is quashed and the Petition is allowed in terms of prayer clause (a).

12) Rule is made absolute in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)