

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1431 OF 2023

Satish Gajanan Mulik and ors ...Petitioner(s)
Versus
State Of Maharashtra and anr ...Respondent(s)

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Mr. Niranjan Mundargi a/w Ms. Keral Mehta, Mr. Satyam Nimbalkar,
Mr. Abhishek i/b. Mr. Niranjan Mogre Advocates for the Petitioner.

Ms. Sangita E. Phad, APP for the Respondent – State.

Mr. Vikas Shivarkar, Advocate for the Respondent No.2.

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

DATE : 16th APRIL, 2024.

P.C.:

1. The Petitioners are challenging FIR dated 6th October 2022 registered with Yerwada Police Station, Pune for the offences punishable under Sections 406, 420, 323, 504, 506 read with 34 of the Indian Penal Code, 1860. It has been registered at the instance of Respondent No.2.

2. The brief allegations as spelt out in the FIR are as follows:

(i) Survey No.14 is ancestral land. Out of the said

property, 79.42 Ares was given to M/s. Swastik Developers by registered agreement dated 10 January 2006. M/s. Swastik Developers gave an amount of Rs.1,31,06,382/- by draft / transfer cheque and cash of Rs.30 Lakhs as well as Rs.1,06,44,382/- and cash of Rs.30 Lakhs. The amount of Rs.1 Crores and 36 Lakhs was kept with accused no.1 on 10th January 2006.

- (ii) On the next day, the complainant's brother approached accused no.1 and demanded the money. However, the amount was not returned.
- (iii) The relatives of complainant who owned the adjacent land entered into the development agreement with M/s. Giridhar Creations. M/s. Giridhar Creations filed a Suit against Baban Pathare and others for ownership of property under agreement dated 15th September, 2004. The amount was withheld by M/s. Swastik Developers.
- (iv) On 1st September, 2007, the complainant and his brother terminated the agreement with M/s. Swastik Developers.
- (v) Suit was filed by M/s. Swastik Developers. An amount of Rs.10 Lakhs was deposited by M/s. Swastik

Developers into the accounts of the complainant and his brother. The complainant and his brother terminated the agreement with M/s. Swastik Developers on 1st September 2007. Written statement was filed in the Suit. Orders were passed by the Civil Court. FIR was registered on 6th October, 2022.

3. Learned Advocate for the Petitioners submitted that the FIR is false and concocted. It has been registered after enormous delay. There is no evidence to establish the claim of the complainant. FIR has been registered after a period of 16 years and 9 month from the date of the alleged incident of depositing cash with the accused. The transaction in respect to the property was between the first informant and his brother with M/s. Swastik Developers. The entire consideration from M/s. Swastik Developers has either deposited in the trial court or by cheque/demand draft in the bank's accounts of the complainant and his brother. There is no element of criminal breach of trust or cheating. FIR ought not have been registered.

4. Learned APP submitted that investigation is in progress.

FIR attributes overtact to the accused. FIR cannot be quashed as the investigation would reveal the involvement of the accused.

5. Learned Advocate for Respondent No.2 submitted that the specific allegations are made against the accused in the FIR. The huge amount was deposited with the accused. The amount which was entrusted has been misappropriated by the accused. The transactions between the complainant and M/s. Swastik Developers *sub-judice* before the Civil Court. M/s. Swastik Developers has no reason to refuse for depositing the amount of Rs.1,77,47,382/- before the Court. The actual transaction was of Rs.4,55,02,038/-. M/s. Swastik Developers are not at loss for depositing the amount of Rs.1,77,47,382/- M/s. Swastik Developers did not insist encashment of the cheques mentioned in the agreement dated 10th January, 2006 and they did not insist for returning the cheques. The cheques were never handed over to the complainant since it was a cash transaction. Investigation is required to be conducted to find out the truth. FIR should not be quashed. The complainant and his brother had deposited huge amount with the accused and on demanding the amount which was entrusted to the accused, the accused kept on evading the return of the amount. One more case

was registered against Petitioner No.1 vide FIR No.427 of 2022 registered with Yervada Police Station, Pune, was quashed by this Court vide judgment and order dated 27th March, 2023.

6. It is pertinent to note that the complainant has alleged that the amount of Rs.1 Crore and 36 Lakhs was kept with the accused on 10th January, 2006. First Information Report was registered after several years. The content of the FIR and other documents disclose that the Development Agreement was executed by the complainant and his brother with M/s. Swastik Developers in respect of 79.42 Ares. Agreement was registered on 10th January, 2006 at the office of the Sub-Registrar, Haveli No.6, Pune. The total consideration of agreement was Rs.1,61,06,382/-. It appears that M/s. Swastik Developers have deposited 6 cheques with the complainant and his brother, 2 cheques of Rs.15 Lakhs each dated 10th January, 2006 which was issued in the name of the complainant and his brother. On the date of the agreement, 2 cheques of Rs.25 Lakhs each issued in the name of the first informant and his brother. An amount of Rs.80 Lakhs was paid to the first informant till 20th January, 2006. Agreement was entered into between them on the same day. Agreement was notarized.

M/s. Swastik Developers agreed to pay Rs.1,06,44,382/- to the informant. The land assigned to M/s. Swastik Developers was from the larger property, out of which, the share of the first informant, his brother and the family member was assigned to M/s. Swastik Developers. In 2004, the relatives of the first informant and his brothers, Baban Pathare and Balu Pathare who owned the adjacent portion of land had entered into the development agreement with M/s. Giridhar Creations in respect of that share in the ancestral property. M/s. Giridhar Creations filed a Suit before the Civil Judge, Senior Division, Pune against Baban Pathare and Balu Pathare & ors for claiming ownership of portion of property under that agreement dated 15th September, 2004. The first informant, his brother and M/s. Swastik Developers were also added as defendants in that Suit. By notice dated 1st September, 2007, the agreement entered with M/s. Swastik Developers was terminated. M/s. Swastik Developers filed a Suit before the Civil Judge, Senior Division, Pune against the first informant and his brother and their family members. Written statement was filed by the first informant and his brother wherein it was stated that post dated cheques were issued by M/s. Swastik Developers. The first informant also admitted receipt of Rs.80 Lakhs and Rs.10 Lakhs from M/s. Swastik Developers. Thus, the complainant and his

brother had admitted that Rs.1,87,50,764/- was due and payable by M/s. Swastik Developers. The first informant has stated that he was ready to refund an amount of Rs.80 Lakhs. Vide order dated 11th November, 2009, the learned Civil Judge, Senior Division, Pune rejected Exhibit-5 Application preferred by M/s. Swastik Developers. The Appeal was preferred by challenging the said order before this Court. Vide order dated 1st December, 2010, this Court directed M/s. Swastik Developers to deposit Rs.1,77,47,382/- in the trial Court and ad-interim relief was granted in favour of M/s. Swastik Developers. By order dated 27th June, 2017, the said Appeal was disposed of. Thus, the transaction with regard to the said property was between the first informant, his brother and M/s. Swastik Developers. In the FIR, it is alleged that the Development Agreement was executed with M/s. Swastik Developers for total consideration of Rs.4,55,02,028/-. It is apparent that after execution of the agreement, M/s. Swastik Developers had handed over the amount by cheques and cash totaling into Rs.1,61,06,382/-.

7. In the light of the factual matrix, it is difficult to accept that the huge amount was deposited with the accused in 2006.

There is no correspondence on record indicating the complainant and his brother demanded the alleged amount from the Petitioners. In the light of the above factual matrix, it would be an abuse of process of law to continue the proceedings against the Petitioners. Hence, First Information Report is required to be quashed.

ORDER

- i) Criminal Writ Petition No.1431 of 2023 is allowed and disposed off;
- ii) FIR No.478 of 2022 registered with Yerwada Police Station, is quashed and set aside.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)