



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 1281 OF 2023

(Rupesh Mohit Shah Vs. State of Maharashtra and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.R. Vyas, Advocate for applicant.
Mr. A.B. Badar, APP for respondent No.1/State.
Mr. H.R. Gadhia, Advocate for respondent No.2.

**CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.**
DATED : 11-12-2024

On 6.12.2024, we had recorded the following position.

"1. The application seeks quashing of FIR No.0551/2023, dated 26.08.2023, for the offences punishable under Sections 420, 468 and 471 read with 34 of the Indian Penal Code, in which the applicant has been arrayed as accused No.2. Mr. Vyas, learned counsel for the applicant submits, that even prima facie reading of the FIR, would indicate, that insofar as the present applicant is concerned, no case is made out for the reason that on 30.12.2014, the accused no.1, who was the power of attorney holder for original owners Durgatai Mokhare, Shri Nutan Mokhare, Shri Chandrashekhar Mokhare and Smt. Manjusha Balpande, in respect of the land on which "Mokhare Palace" was constructed had agreed to sale to the applicant apartment No. S-001, covering a built up area of 67.491 sq.mtrs. on the 2nd floor of the said building along with 4.10% undivided share and interest in the land, which agreement was for total consideration of Rs.26,66,000/-, out of which, part consideration of Rs.23,66,000/- already stood paid on the date of the agreement of sale. This agreement of sale was duly registered with the Sub-Registrar on 01.1.2015 at Sr. No. 12/2015. The balance consideration was only a sum of Rs.3,00,000/-, which having been paid, a sale deed came to be executed and registered in favour of the applicant on 05.10.2015, which is registered at Sr. No. 6421/2015 (page 59).

2. However, the accused no.1, without knowledge of the applicant had also executed an agreement to sale in respect of the same apartment No. S-001 in favour of complainant Prafulla Thakurdas Sawal, on 26.06.2015 (page 40). It is, therefore, contended, that no role can be

attributed to the applicant in the execution and registration of subsequent agreement of sale on 26.06.2015 in favour of the complainant by the accused no.1 and, therefore, this is a fit case for quashing the FIR.

3. Learned APP as well as learned counsel appearing for the non-applicant No.2, seek time, considering which, list the matter on 11.12.2024”.

2. Mr. Gadhiya, learned Counsel appears for non-applicant No. 2 and opposed the application alongwith the learned APP to contend, that since the non-applicant No. 2 is being deprived of the title to the property on account of non execution and registration of saledeed in favour of the non-applicant No. 2, the offence u/s 420, 468 and 471 of the IPC would be made out against the present applicant.

3. What is necessary to note, is that there is an earlier agreement of sale dated 30.12.2014 in respect of the apartment No. S-001 in favour of the applicant in which, out of the entire consideration of Rs. 26,66,000/- a part consideration of Rs. 23,66,000/- already stood paid to the owner through their power of attorney which agreement of sale is duly registered with the Sub-Registrar on 1.1.2015. A subsequent saledeed has also been registered in favour of the applicant on 5.10.2015.

4. As against this, an agreement of sale came to be executed in favour of non-applicant No. 2 on 26.6.2015, by the accused No.1 which is subsequent in point of time to the agreement of sale in favour of the applicant. Though there is dispute regarding possession being delivered under those agreements and saledeed for which Sp.CS No. 336/2017 is pending at the behest of the applicant what we find, as is evident, from bare

perusal of the FIR, is that at no point of time any allegation is made against the applicant, of having indulged into any act of depriving non-applicant No. 2 with an intention to cause him to deliver any property to the applicant, nor is there any allegation vis a vis the present applicant of having created any document by forgery, for his own benefit vis a vis the apartment No. S-0001, the sale deed having been executed and registered in his favour by the Power of Attorney holder for the owners. In that view of the matter, we find that the ingredients necessary for bringing home the offences u/s 420, 468 and 471 of IPC are not made out even if the statement in FIR is accepted on its whole, on account of which, permitting the prosecution to continue as against the present applicant, would be an abuse of the process of the law and would be perpetuating injustice. In view of the above discussion, we allow the application, by quashing the FIR No. 551/2023 dated 26.8.2023, registered with the Non-applicant No. 1 - Police Station, Lakadganj, Nagpur City u/s 420, 468, 471 of the IPC *vis a vis* the present applicant.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)