



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

33 CRIMINAL APPLICATION NO. 1160 OF 2023

1. Mohammad Fahim Rashid Farooqui
Age 51 years, Occ. Business,
R/o. Near Devi Mandir, Khasbaugh,
Beed, Tq. And district Beed.
(withdrawn)
 2. Qureshi Mohammad Irfan
Age 50 years, Occ. Labour
R/o. C/o. Sattar Kirana,
Gadegaon Road, Deglur Naka
Itwara, Nanded
Tq. And district Nanded
 3. Danish Hyder Shaikh
Age 26 years, Occ. Labour
R/o. Naikwad Galli, Kundalwadi,
Tq. Kundalwadi, District Nanded
- ...Applicants

Versus

1. The State of Maharashtra
Through Dharmabad Police
Station, Tq. Dharmabad
district Nanded
 2. Mohammad Iqbal Ahmed s/o
Gulam Mortuza
Age 72 years, Occ. Business,
R/o. House No. 9-7-393,
Imran Colony, Maltekdi Road
Nanded, Tq. and Dist. Nanded
- ...Respondents

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Advocate for Applicant : Mr. Rehan Khan Pathan h/f Mr. G.R. Syed
APP for Respondent No.1: Mr. A.R. Kale
Advocate for Respondent No.2 : Mr. Vishnu B. Madam Patil

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**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.
DATED : 8th APRIL, 2025**

PER COURT :-

1. The present application has been filed for quashment of the proceedings of R.C.C. No. 28 of 2020 pending before the learned Judicial Magistrate, First Class, Dharmabad, District Nanded arising out of F.I.R. vide C.R. No. 195 of 2019 dated 02.10.2019 registered with Dharmabad police station, Tq. Dharmabad, district Nanded for the offences punishable under Sections 420, 468, 471, 34 of I.P.C.
2. Heard learned advocates for the respective parties. After disinclination is shown to grant any relief to applicant No.1, learned advocate for the applicants, Mr. Rehan Khan Pathan h/f Mr. G.R. Syed, on instructions, seeks withdrawal of the application as against applicant No.1. The matter to proceed for the relief claimed by applicant Nos. 2 and 3.
3. Perusal of the F.I.R. and the charge sheet would show that respondent No.2 alleged that immovable property No. 431 situated at Balapur, within the jurisdiction of Municipal Council Dharmabad, stands in the name of himself and his three brothers. When Vijay Sarpate gave him information on 26.09.2019 that his brother Rais has prepared forged documents and sold the property to his son original accused No.2 Nurul Islam on 15.07.2019. Thereafter, said

Nurul Islam sold the said property by preparing vague documents on 30.09.2019 to applicant No.1 herein to which applicant Nos. 2 and 3 are witnesses. The informant has tried to say that inspite of having knowledge that documents are forged, yet applicant Nos. 2 and 3 have acted as witnesses and thereby participated in the offence.

4. Perusal of the F.I.R. and the statements of witnesses would show that there is no positive and concrete evidence to indicate about knowledge of present applicant Nos. 2 and 3 regarding preparation of false documents. No doubt, they are signatories as witnesses to the said sale transaction dated 30.09.2019, the knowledge/ *mens-rea* is the basic ingredient for offence under sections 420, 468, 471 r.w. 34 of I.P.C. Even if we take that the present applicant Nos. 2 and 3 were knowing applicant No.1 since prior to 30.09.2019, yet knowledge should be in respect of the documents i.e. forged documents. The document dated 30.09.2019 *per-se* cannot be said to be a forged document or fabricated for the simple reason that it is in the original form. As regards the other documents are concerned, it is the prosecution's case that other two brothers of informant were not signatories and they were impersonated at the relevant time by some third person. When the document dated 15.07.2019 was executed there is nothing on record to show that the present applicant Nos. 2 and 3 were present. If at

later point of time i.e. after 15.07.2019, applicant Nos. 2 and 3 had witnessed the transaction of sale, between applicant No.1 and Nurul Islam, then the facts would have been altogether different. Therefore, when the basic criteria is not attracted, it would be unjust to ask the applicant Nos. 2 and 3 to face the trial. Hence, the following order:-

O R D E R

- I. The application stands partly allowed.
 - II. The proceedings of R.C.C. No. 28 of 2020 pending before the learned Judicial Magistrate, First Class, Dharmabad, District Nanded arising out of F.I.R. vide C.R. No. 195 of 2019 dated 02.10.2019 registered with Dharmabad police station, Tq. Dharmabad, district Nanded for the offences punishable under Sections 420, 468, 471 r.w. 34 of I.P.C. stand quashed and set aside as against applicant Nos. 2 and 3.
 - III. The application stands dismissed as withdrawn as against applicant No.1.
5. Fees of learned advocate appointed to represent the cause of respondent No.2 is quantified at Rs.7,000/- (Rupees Seven thousand) to be paid by the High Court Legal Services Sub Committee, Aurangabad.

(SANJAY A. DESHMUKH, J.) (SMT. VIBHA KANKANWADI, J.)