



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 1612 OF 2023

1. Prakash S/o Baliram Dhage
Age : 49 years, Occ : Labour,
2. Chaya W/o Prakash Dhage
Age : 47 years, Occ : Household,

Both R/o Sadashiv Nagar, Khadgaon Road,
Latur, Tq. & Dist. Latur.

..APPLICANTS

-VERSUS-

1. The State of Maharashtra
Through Police Inspector,
Police Station, M.I.D.C.,
Latur, Tq. & Dist. Latur
2. Jijabai W/o Tukaram Dhale
Age : 55 years, Occ : Nil,
R/o Marwadigalli, Nilanga,
Tq. Nilanga, Dist. Latur.

..RESPONDENTS

Advocate for the applicants : Mr. N.T. Tribhuwan
APP for Respondent- State : Mrs. R.P. Gour
Advocate for respondent No.2 : Mr. A.A. Kokad

...
**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATED : 7th JANUARY, 2025

JUDGMENT (PER ROHIT W. JOSHI, J.) :

. The Applicants in the present matter are husband and wife.
They are arrayed as Accused Nos.5 and 6 in F.I.R. No.31/2023
registered with M.I.D.C. Police Station, Latur, Dist. Latur on 16.01.2023

for offences punishable under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code (I.P.C.). Respondent No.2 is the informant.

2. The controversy in the matter pertains to a piece of land, being plot no.13 admeasuring 1500 Sq. Ft. located in Gut No.106 of village Pakharsangavi, Tq. & Dist. Latur. The applicants are residing in plot no.13 and are accordingly in possession thereof. According to the applicants, the said plot no.13 was purchased by Somnath Waghmare, father of Applicant No.2 / Accused No.6 and father-in-law of Applicant No.1/Accused No.5 from one Dayaram Atmaram Singhan, vide registered sale deed no.1562/2007 dated 30.03.2007. The applicants state that they have purchased the said plot from Somnath Waghmare, vide registered sale deed dated 13.03.2009 bearing No.252/2009. The applicants obtained building permission dated 22.03.2024 from Gram Panchayat, Pakharsangavi for construction of house on the said plot.

3. Respondent No.2 has lodged F.I.R., as aforesaid on 16.01.2023. The F.I.R. pertains to two adjoining plots i.e. plot nos.12 and 13. The present applicants are in possession of plot no.13. The version of Respondent No.2, as is apparent from the contents of F.I.R., is that vide registered sale deed no.1534/2004 dated 15.03.2004, she has

purchased plot nos.12 and 13 from one Dayaram Atmaram Singhan. She states that she and her husband used to visit the plots regularly. Thereafter, since her husband was suffering from Cancer from the year 2017, they could not visit the plots regularly. Respondent No.2 has stated that her husband expired on 28.10.2021. Some time after the demise of her husband, Respondent No.2 visited the plots with her son and found that there was structure with tin shed on the said plots. She states that on inquires with the occupant, he disclosed his name as Prakash Dhage i.e. Applicant No.1. Respondent No.2 and her son made inquires with the office of Talathi and Sub-Registrar and found that one Nanasaheb Raosaheb Chavan had purchased the same plot nos.12 and 13, vide sale deed dated 19.12.2017, bearing no.4902/2017. In the said sale deed, Respondent No.2 is shown as vendor. Respondent No.2 states that she did not execute the sale deed dated 19.12.2017. According to her, some person had impersonated herself as vendor and executed the said sale deed dated 19.12.2017 in favour of Nanasaheb Chavan. This Nanasaheb Chavan is arrayed as Accused No.1 in the F.I.R. The wife of Accused No.1 namely Kalpana Chavan and one Nanasaheb Waghmare have signed the sale deed as attesting witnesses. These two attesting witnesses are arrayed as Accused Nos.2 and 3. One Sagar Bade is arrayed as Accused No.4. It is stated in the F.I.R. that he is a person, who acted as broker in the transaction of sale and purchase of plots.

Respondent No.2 has stated that Accused No.1 purchaser and Accused No.4 Agent had provided the sale deeds and other documents for mutation of name of Accused No.1 Nanasaheb Chavan on the basis of bogus sale deed dated 19.12.2017. The F.I.R is silent with respect to sale deed dated 30.03.2007 executed by Dayanand Singhan in favour of Somnath Waghmare, father-in-law of Applicant No.1. Sale deed is also silent with respect to subsequent sale deed dated 13.03.2009 under which Applicant No.1 has purchased the said plot no.13 from his father-in-law Somnath Waghmare. The allegation against the Applicants is that they are in wrongful possession of the said plots and when Respondent No.2 and her son inquired with them about their possession, they stated that plot belonged to Accused No.1 Nanasaheb Chavan. It is alleged that the present Applicants have acted in collusion and conspiracy with Accused Nos.1 to 4 in order to wrongfully usurp the said plot and deprive Respondent No.2 of the same.

4. Shri N.T. Tribhuwan, learned counsel for the Applicants submits that Applicant No.1 is bonafide purchaser of plot no.13, which he has purchased from his father-in-law under a registered sale deed dated 13.03.2009. He states that his father-in-law was also bonafide purchaser of the said plot, who had purchased the same from Dayanand Singhan, vide registered sale deed dated 30.03.2007. He points out that

the F.I.R. is completely silent with respect to the sale deed executed by Dayanand Singhan in favour of father-in-law of Applicant No.1 from whom Applicant No.1 has purchased the said plot no.13. He further points out that Dayanand Singhan is not even arrayed as accused. He states that even if all the contents of the F.I.R are assumed to be correct, it is apparent that he is in fact victim of offence of cheating, in as much as, if all the allegations in the F.I.R. are assumed to be correct, he has been made to part with money towards purchase of a plot, which was already sold by the original owner Dayanand Singhan to Respondent No.2. He states that even if all the allegations in the F.I.R. are taken on their face value, no offence is made out against Applicant Nos.1 and 2 and as such, F.I.R. deserves to be quashed.

5. As against this, Mrs. R.P Gour, learned APP appearing for Respondent No.1 and Shri A.A. Kokad, learned counsel appearing for Respondent No.2 strenuously opposed the application. They state that Respondent No.2 had already purchased plot nos.12 and 13 from Dayanand Singhan, vide registered sale deed dated 15.03.2004. They state that a registered document amounts to public notice to all. According to them, it is inconceivable that the father-in-law of Applicant No.1 as also Applicant No.1, who has purchased plot no.13 from him were not aware about the prior sale deed dated 15.03.2004.

They state that there is deep state conspiracy in the matter, in as much as, property belonging to Respondent No.2 was sold vide sale deed dated 19.12.2017 by some impostor posing to be Respondent No.2.

6. We have also perused the affidavit-in-reply filed by Respondent No.2. In the said affidavit also she does not dispute genuineness of the sale deed dated 30.03.2007. She challenged the sale deed dated 30.03.2007 on the ground that the same could not have been executed in view of the prior sale deed dated 15.03.2004 in her favour. She then states that the father-in-law and vendor of Applicant No.1 has maliciously purchased plot no.13 from Somnath Waghmare.

7. Having heard the rival submissions and on perusal of the record, we are of considered opinion that the application deserves to be allowed. It is apparent that the principal grievance of Respondent No.2 is with respect to sale deed dated 19.12.2017, which is executed in favour of Accused No.1 – Nanasaheb Chavan. Respondent No.2 claims that she has not executed the sale deed in favour of Nanasaheb Chavan although her name appears as vendor. According to her, the sale deed was got executed through some impostor posing as Respondent No.2. Perusal of the F.I.R. will indicate that the principal allegation and grievance in the F.I.R. is with respect to the alleged bogus sale deed

dated 19.12.2017. The allegations with respect to the said sale deed are against Accused Nos.1 to 4. As against the present Applicants i.e. Accused Nos.5 and 6, the allegation in the F.I.R. is that they are in possession of the property through Accused No.1. It is alleged that on the first occasion when Respondent No.2 and her son found that Accused Nos.5 and 6 were in possession of plot no.13, they had informed that the said plot was owned by Accused No.1. The allegation in the F.I.R. is that Accused Nos.5 and 6 are holding possession of property of Accused No.1. On the basis of these allegations, it is alleged that there is conspiracy between all the Accused persons including present Applicants to deprive Respondent No.2 of the property belonging to her and wrongfully usurp the same.

8. There are no allegations in the F.I.R. with respect to sale deed dated 30.03.2007 under which Somnath Waghmare vendor of Applicant No.1/Accused No.5 has purchased plot no.13. Likewise, F.I.R. is also silent with respect to sale deed dated 13.03.2009 under which Applicant No.1 has purchased the said plot no.13.

9. It appears from the record that the vendor of Respondent No.2 initially sold both plot nos.12 and 13 to Respondent No.2, vide sale deed dated 15.03.2004. The vendor of Respondent No.2 thereafter

again sold plot no.13 to Somnath Waghmare, vide sale deed dated 30.03.2007. This Somnath Waghmare, who has executed two sale deeds with respect to plot no.13 is not arrayed as accused. There are no allegations against him in the F.I.R. Although, the charge-sheet is not filed, we had perused the police papers. The police papers do not indicate that in the subsequent statements, Respondent No.2 or her son have levelled any allegations against Somnath Waghmare or Dayanand Singhan. The sale deed dated 30.03.2007 is placed on record by the Applicants along with the present application. Genuineness of the said sale deed is not questioned by Respondent No.2 in her affidavit. The said sale deed also collected by the prosecution during the course of investigation as was found from the police papers. Learned APP has also not canvassed during the course of arguments that sale deed dated 30.03.2007 is a bogus document. Learned APP and learned counsel for Respondent No.2 have opposed the application on the ground that having executed the sale deed with respect to plot no.13 in favour of Respondent No.2 on 15.03.2004, her vendor Dayanand Singhan could not have sold the same property under a subsequent sale deed dated 30.03.2007 to Somnath Waghmare, vendor and father-in-law of Applicant No.1. This again goes on to show that the grievance if any should be against Somnath Waghmare.

10. In the light of aforesaid, we are of considered opinion that no case is made out against the present Applicants for the offences mentioned in the F.I.R. The Applicants cannot be held responsible for the offence of cheating under Section 420 of the IPC. It also cannot be said that the Applicants have committed forgery much less for the purpose of cheating or used the forged document as genuine document. Prosecution has miserably failed to make out ingredients of Sections 465, 467, 468, 471 and 420 of the IPC. The F.I.R. does not disclose any offence against the present Applicants. The dispute between the parties is purely civil dispute. Respondent No.2 is not justified in invoking penal provisions against the present Applicants with respect to her civil rights qua plot no.13, which is in possession of the Applicants.

11. Above observations are made only in order to determine as to whether the Applicants can be held prima facie responsible for the sections under which F.I.R. is registered against them. The above observations are not made in order to determine any claims with respect to the property in question. The parties may agitate the matter with respect to right, title, interest over the property in question before appropriate Forum.

12. However, we are of considered opinion that a civil dispute

is given a criminal colour, which is completely unjustified and amounts to abuse of the legal process. In the light of the above observations, we are of the considered opinion that undisputed material on record does not disclose any offence against the Applicants. The F.I.R. is therefore liable to be quashed against the Applicants. Hence the order :-

ORDER

- (i) The application is allowed.
- (ii) F.I.R. No.31/2023 registered with M.I.D.C. Police Station, Latur, Dist. Latur on 16.01.2023, for the offences punishable under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code is hereby quashed against Applicant No.1 - Prakash S/o Baliram Dhage and Applicant No.2 - Chaya W/o Prakash Dhage.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/