



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

CRIMINAL APPLICATION NO.2365 OF 2023

1. Sagar s/o Suresh Mundlik
Age : 32 yrs, Occ : Business,
2. Prashant s/o Suresh Mundlik
Age : 36 yrs, Occ : Business,
Both R/o. Rahta, Tq. Rahta,
Dist. Ahmed Nagar.

..... **APPLICANTS**

...V E R S U S...

1. The State of Maharashtra,
Through the Police Inspector,
Rahta Police Station, Tq. Rahta,
Dist. Ahmed Nagar.
2. Akshay s/o Suresh Nikale,
Age : 28 yrs, Occ : Advocate,
R/o Ambedkar Nagar, Rahta,
Tq. Rahta, Dist. Ahmed Nagar.

..... **RESPONDENTS**

Mr. Rupeshkumar C. Bora, Advocate for Applicants.
Mr. G. A. Kulkarni, APP for Respondent No.1/State.
Mr. Amol S. Gandhi, Advocate for Respondent No.2.

CORAM: **SMT. VIBHA KANKANWADI AND**
 ROHIT W. JOSHI, JJ.
DATE: **22nd JANUARY, 2025.**

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

1. The applicants have invoked our inherent jurisdiction
under Section 482 of the Code of Criminal Procedure in order to
challenge FIR dated 17.04.2023 registered with Rahta Police

Station, District Ahmed Nagar vide Crime No.227/2023 for the offence punishable under Sections 467, 468, 471, 419, 420 read with Section 34 of the Indian Penal Code. The non-applicant no.2 is the informant in the present matter, who has lodged the FIR. The present respondent no.2 is a practicing Advocate at Rahta, District Ahmed Nagar. The contents of the FIR recite that somewhere in the year 2019 the present applicants have visited the respondent no.2 in Rahta Court premises along with one lady who was not known to the respondent no.2. The respondent no.2 states that the applicants introduced the said lady to him as Smt. Pramila Kailas Maind and stated that there was a civil suit pending *inter se* between them being Regular Civil Suit No.236/2018 and since they had settled the matter amicably, the respondent no.2 should extend professional assistance for obtaining compromise decree. The respondent no.2 then states that since he had some urgent work he did not talk in detail and left for his court work. He then states that on 25.02.2019 the said lady contacted him in court premises and gave her a Vakalatnama and some documents including an affidavit for filing in the court. He states that those documents were already got prepared and he was instructed merely to file them. He states that having filed the Vakalatnama in the matter, he attended the proceedings in the suit for sometime.

However, later on then he asked the said lady to deposit his professional fess, the said lady bluntly refused to pay the same saying that the documents were prepared at Nashik and the respondent no.2 had merely filed the same. The respondent no.2 states that on refusal to pay his professional fees, he had returned the papers to the said lady by giving a, 'no objection', for engaging another Advocate. Since then he has not attended the proceedings. The respondent no.2 then makes a reference complaint filed against him before the Bar Council of Maharashtra and Goa vide Complaint No.101/2022. He states in order to attend the hearing in the said complaint, he had gone to the office of Bar Council of Maharashtra and Goa in the High Court premises at Aurangabad on 13.04.2023 where the complainant lady – Smt. Pramila Kailas Maind was present. He states that he was surprised to notice that the lady who met him earlier in the Rahta Court premises and at whose his behest he had filed Vakalatnama and other documents in the civil suit and the lady present in the disciplinary proceedings in the office of Bar Council of Maharashtra and Goa was not the same person. She was a different person other than the one who met him in the Rahta Court premises. He, therefore, lodged the impugned FIR with Police Station Rahta stating that some unknown lady had

represented herself as Smt. Pramila Kailas Maind and got certain documents filed through him as an Advocate in pending court proceedings. The allegations against the present applicants is that they had introduced the said lady to him as Smt. Pramila Kailas Maind. He alleges that the applicants and the said lady acted in collusion in order to get fabricated documents filed through him in the pending court proceedings and as such they have committed offence of cheating by impersonation as also fabrication of documents. On the basis of the said report the respondent no.1 has registered the impugned FIR against the present application and the unknown lady.

2. The property which is subject matter of the said suit is an immovable property bearing property no.394 situated at Shirdi. There is a dispute between Pramila Maind and the applicants in relation to the said property. The said Pramila Maind claimed that she has sold 40 square meters of land in the said property to the present applicants, however, they have encroached upon some additional portion of the land owned by her. Civil suit is pending in relation to this property.

3. The applicants have challenged the FIR principally on two grounds. Firstly, that in his reply filed before the Bar Council

of Maharashtra and Goa the respondent no.2 has taken a stand which is completely contradictory to the allegations levelled in the FIR. They contend that the respondent no.2 has attempted to justify his appearance and act of filing documents in the civil suit in reply to the complaint filed by Pramila Maind. The second contention raised by the applicants is that the husband of Pramila Maind namely Kailas Baburao Maind had lodged FIR against the present applicants in relation to the same property alleging that they had committed trespass in the said property as also offence of theft by removing movables belonging to him in the said property and the said FIR is quashed vide judgment dated 06.06.2023 passed by this Court in Criminal Application No.4436/2022.

4. We have heard Mr. Rupeshkumar Bora, learned Advocate for the applicant, Mr. G. A. Kulkarni, the learned Additional Public Prosecutor for respondent no.1/State and Mr. Amol Gandhi, learned Advocate for the respondent no.2 informant. We have also perused the FIR and other documents with the assistance of learned counsel.

5. Perusal of the FIR demonstrates that the respondent no.2 has levelled a clear allegation against the applicants that they have introduced one lady to him as Pramila Kailas Maind against

whom they were contesting a civil litigation. He has clearly alleged that the applicants have falsely represented that the *inter se* dispute between them and Pramila Kailas Maind in relation to the property was settled and they wanted to obtain compromise decree in the civil suit with the assistance of the respondent no.2. The said lady had then approached the respondent no.2 for the purpose of filing certain documents, which were already drafted and prepared, in the said civil suit. There is a clear allegation that this lady who was introduced to the respondent no.2 by the applicants was not Pramila Maind. She was an impostor, who was introduced by the applicants to the respondent no.2 as Pramila Maind. It is obvious that the applicants knew Pramila Maind since they had purchased the subject property from her and were contesting a litigation with respect to the said property with her yet they have introduced an impostor as Pramila Maind to the respondent no.2. The intention in doing so was to obtain a compromise decree adverse to the interest of Pramila Maind behind her back without letting her know about it. The allegations in the FIR are clear and specific. The allegations clearly indicate that but for the representation by the applicants and the impostor, the respondent no.2 would not have appeared on behalf of Pramila Maind in the said civil suit and further that he would not

have filed Vakalatnama, affidavit and other documents in the said suit acting as Advocate for Pramila Maind. The alleged act committed by the applicants and the said unknown lady is a clear act of deception and the said deception had induced the respondent no.2 to do something that he would not have done had he not been so deceived. The ingredients of Section 415 of the IPC are therefore, clearly made out on reading of the FIR. Since cheating is by personation, Sections 416 and 419 of the IPC are also attracted. The Vakalatnama and affidavit filed in the civil suit are executed by the unknown lady as Pramila Maind with a dishonest and fraudulent intention with a view to commit offence of cheating. Thus Sections 467, 468 and 471 are also attracted.

6. The applicants have strongly relied upon reply dated 24.05.2022 filed by the respondent no.2 in response to the complaint lodged against him by Pramila Maind before the Bar Council. Indeed in the reply dated 24.05.2022 the respondent no.2 has sought to justify his action. However, that by itself does not carry the case of the applicants any further, since as per the contents of the FIR the respondent no.2 realized that the lady introduced to her as Pramila Maind was in fact an impostor for the first time on 13.04.2023 when he visited the office of Bar Council

in relation with the said complaint and saw the real Pramila Maind. The argument regarding inconsistency between the reply dated 24.05.2022 and the FIR dated 17.04.2023 is therefore, liable to be rejected.

7. The second contention raised by the applicants is that the husband of respondent no.2 had lodged FIR alleging criminal trespass and theft against them in relation to the said property. The said FIR was quashed by this Court vide judgment dated 06.06.2023 passed in Criminal Application No.4436/2022 and consequently the impugned FIR shall also be quashed. The said argument is also without any substance. The allegations in both the FIRs are completely different. One pertains to allegation of theft and criminal trespass and other pertains to offence of cheating by introducing a fictitious person in place of the real person who is party to the civil suit in order to obtain compromise decree in the civil suit. It needs to be mentioned that it is not in dispute that 40 square meters of land in the property in question was sold by the said Pramila Maind to the applicants. There is an *inter se* dispute between them in relation to possession of the property in as much as Pramila Maind and her husband claim that on the basis of the said sale-deed the applicants have encroached

over some additional portion of land which was not sold to them. In this backdrop husband of Pramila Maind had lodged FIR regarding criminal trespass and theft against the applicants. The said FIR was lodged relying upon the said sale-deed executed in favour of the applicants. The two offences are completely different although the property involved is the same. It will be pertinent to mention that the husband of Pramila Maind had filed Criminal Writ Petition No.226/2022 and Criminal Application No.879/2023 in relation to the said FIR vide Crime No.25/2022. The prayer in writ petition was to transfer investigation to some other independent agency. The said prayer was turned down since investigation was already over in the matter. Criminal Application No.879/2023 was filed seeking permission to file the impugned FIR and other documents in relation to the impugned FIR in relation to investigation in FIR No.25/2022 i.e. FIR lodged by husband of Pramila Maind regarding criminal trespass and theft. This court has rejected the said application observing that the said documents had no relation with the FIR of theft and criminal trespass lodged by husband of Pramila Maind. In view of the aforesaid, merely because FIR lodged by husband of Pramila Maind against the present applicants was quashed by this Court cannot be a ground for quashing the impugned FIR.

8. For the reasons aforesaid, we find that the application is without any merit and as such prayers made in the criminal application cannot be granted. The criminal application is accordingly rejected.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)