



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1821 OF 2021

Jaykumar s/o Vardhaman Jain
Age: 34 years, Occu.: Business & Agri.,
R/o. Khasdari area, Jain Sadan, Kannad,
Tq. Kannad, District Aurangabad.

.. Applicant

Versus

1. The State of Maharashtra
Through the Police Inspector,
Kannad City Police Station,
Taluka Kannad, District Aurangabad.
2. Shaikh Bilal s/o Shaikh Kadar
Age: 29 years, Occu.: Business,
R/o. Galleboragaon, Tq. Kannad,
District Aurangabad.

.. Respondents

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WITH

CRIMINAL APPLICATION NO.2267 OF 2020

1. Raiskhan s/o Bhikankhan Pathan
Age: 41 years, Occu.: Agriculture,
R/o. Banshendra Panpoi Phata,
Taluka Kannad, District Aurangabad.
2. Lalkhan s/o Husenkhan Pathan
Age: 48 years, Occu.: Agriculture,
R/o. Banshendra Panpoi Phata,
Kannad, Taluka Kannad,
District Aurangabad.
3. Kalim s/o Rafiq Patel
Age: 28 years, Occu.: Agri.,
R/o. Banshendra, Tq. Kannad,
Dist. Aurangabad.
4. Anis s/o Musa Shaikh
Age: 29 years, Occu.: Agri.,
R/o. Banshendra, Tq. Kannad,
District Aurangabad.

5. Ajjkhan s/o Manwarkhan Pathan
Age: 62 years, Occu.: Labour,
R/o. Banshendra Panpoi Phata,
Kannad, Tq. Kannad, Dist. Aurangabad.
6. Shabbir s/o Bhikankhan Pathan
Age: 51 years, Occu.: Labour,
R/o. Banshendra Panpoi Phata, Kannad,
Tq. Kannad, District Aurangabad.
7. Limchand s/o Harsingh Rathod,
Age: 50 years, Occu.: Agriculture,
R/o. Langada Tanda,
Tq. Kannad, District Aurangabad.

.. Applicants

Versus

1. The State of Maharashtra
Through the Police Station Officer,
Kannad City Police Station,
Tq. Kannad, District Aurangabad.
2. Shaikh Bilal s/o Shaikh Kadar
Age: 29 years, Occu.: Business
of Clothe Store,
R/o. Galle Borgaon, Tq. Kannad,
District Aurangabad.

.. Respondents

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Mr. Yogesh D. Kale, Advocate for the applicant in Criminal Application No.1821 of 2021.

Mr. A. R. Devakate, Advocate for the applicant in Criminal Application No.2267 of 2020.

Mr. A. M. Phule, APP for respondent No.1/State in both the matters.

Mr. N. S. Shaikh and Mr. Yogesh A. Jadhav, Advocate for respondent No.2 in both the matters.

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

**RESERVED ON : 03 MARCH 2025
PRONOUNCED ON : 23 APRIL 2025**

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Both the applications have been filed for quashing the proceedings in Regular Criminal Case No.115 of 2021 pending before the learned Judicial Magistrate First Class, Kannad, District Aurangabad arising out of FIR vide Crime No.407 of 2020 dated 01.10.2021 registered with Kannad City Police Station, Taluka Kannad, District Aurangabad for the offences punishable under Sections 420, 465, 468, 471 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. Yogesh D. Kale for the applicant in Criminal Application No.1821 of 2021, learned Advocate Mr. A. R. Devakate for the applicants in Criminal Application No.2267 of 2020, learned APP Mr. A. M. Phule for respondent No.1/State in both the matters and learned Advocate Mr. N. S. Shaikh for respondent No.2 in both the matters.

3. Learned Advocates appearing for the applicants vehemently submit that respondent No.2/informant has filed the FIR with *mala fide* intention. There is huge delay in lodging the report. The informant submits that his father Shaikh Kadar Shaikh Rustum had purchased 6 Gunthas of land from Gut No.114 situated at village Banshendra (Panpoi Phata), Taluka Kannad, District Aurangabad in 1994. The said agricultural land was abutting Aurangabad – Dhule Highway and

therefore, his father had made construction of four shops/Gala's in 2 Gunthas and rest of the 4 Gunthas was covered by wall fencing. In 2007 his father gave 1 Guntha land for construction of Masjid and Madarsa without taking any consideration to a Trust. The construction of Masjid and Madarsa was completed in 2008. Lands from various farmers were acquired by the Government in 2015 for development and widening of the State Highway to National Highway. The Government gave compensation to his father in respect of acquisition of 6 Gunthas land, which was in his father's name. When actual work of widening started in 2019, it was noticed that actually only 4 Gunthas of land was acquired. Therefore, by application dated 09.04.2019, his father made communication to the Special Land Acquisition Officer that he is ready to return the excess amount that has been received towards compensation. The State Government has started the process of refund from the father of the informant. Informant states that 2 Gunthas of land of the ownership of his father is still remaining, but it was noticed that one Jaykumar Vardhaman Jain has got a sale deed executed in his favour from the co-accused. Raiskhan Pathan, Lalkhan Pathan, Kalim Patel and Anis Shaikh. There are three witnesses to the said incident. This sale deed is nothing but a document to grab the compensation amount. The sale deed is in respect of 6 Gunthas of land from Gut No.114 which was not in existence at all and it was entered into on 24.01.2020 and the

7/12 extract of the same was prepared on 27.02.2020. Those documents were produced before the Government for getting the compensation.

4. Learned Advocates appearing for the applicants further submit that in fact the nature of the dispute appears to be civil in nature, as unless the informant or his father get themselves declared as owner, it cannot be stated by them that 2 Gunthas of land is belonging to the father is still remaining. Now, the informant and his father have in fact enjoyed the excess amount of compensation and only an application has been filed stating that they are ready to refund the excess amount. That procedure by measuring the land again has not taken place. If at all the informant had the knowledge in 2019 that the land to the extent of 2 Gunthas is still remaining, then why they had waited till 01.10.2020 to lodge the FIR. The documents which have been collected by the investigating officer would show that in fact applicant Jaykumar Jain had purchased 56 R land from Kachru Kisan Tribhuwan on 18.01.2005. It was out of 3 H 53 R from Gut No.114 situated at village Banshendra, Taluka Kannad, District Aurangabad. Said Kachru Tribhuwan is also the vendor to the sale deed of the informant's father. Thereafter, by another sale deed dated 29.01.2005, Jaykumar Jain purchased another piece of land admeasuring 50 R from said Kachru Tribhuwan from the said Gut number. Thus, in the year 2005 itself, Jaykumar Jain was holding two plots of 53 R and 50 R from Gut No.114. Now, said Jaykumar Jain sold

6 R land from his ownership to those four accused, who are in fact the office bearers of the Trust of Masjid and Madarsa, as the said portion of their property was acquired which they had purchased from the father of the informant. The Trust purchased 6 R from adjacent land from the same Gut number. Therefore, there was no question of cheating anybody. The compensation claim if at all it is to be made on behalf of the Trust, would be to the extent of 1 Guntha land which they had produced from the father of the informant and then it was acquired by the State. Unnecessarily a dispute has been created by the informant and unless the boundaries got fixed and the land has identified, the informant cannot agitate that what has been purchased by the Trust now from Jaykumar Jain is not that of the ownership of the Jaykumar and, therefore, it would be unjust to ask the applicants to face the trial.

5. Learned APP as well as learned Advocate appearing for respondent No.2 vehemently submitted that all the documents, which have been collected in the investigation show that there is a dispute and on the facts, this Court cannot go much deeper into the same. Existence of such property as is shown in the sale deed between Jaykumar and the Trust itself is in question, as the statements of witnesses who have their own agricultural land in the vicinity would make it clear. On the basis of such document then ownership cannot be transferred. The statements of other witnesses such as the Surveyor, Land Records

Office, Special Land Acquisition Officer etc. would support the fact of acquisition of land. Therefore, this is not a fit case where the Court should exercise its powers under Section 482 of the Code of Criminal Procedure.

6. At the outset, it is to be noted that the informant has stated that his father had purchased 6 Gunthas of land in 1994. Out of that in 2 Gunthas of land his father made construction. From remaining 4 Gunthas, he had given 1 Guntha land in 2007 to Masjid and Madarsa Trust. This equation would show that 3 Gunthas of land might have been remaining in the name of his father, but then in the year 2015, the Government acquired entire land which was in the name of his father i.e. 6 Gunthas. He then says that in 2019 it was realized that actually only 4 Gunthas of land has been acquired. On what basis he has stated the said fact itself is a question. If we consider the statements of Sanjay Borde, Surveyor, who had carried out the measurement, Mahesh Jadhav, Measurer, Shivaji Bagul – Scrutiny Clerk, Sadanand Ingle - *Nimtandar*, Kundan Pardeshi – Deputy Superintendent of Land Records, Kannad, and Vinod Kale – Cadastral Surveyor, those statements would show that they have come in picture after 2020 and for measurement then it appears that the State Government wants to rely on the award. In fact, in the award based on the joint measurement the compensation has been awarded. Even the informant accepts that the father has received

the amount of compensation in respect of acquisition of 6 Gunthas of land. Therefore, on what basis the informant was saying that actually only 4 Gunthas of land were acquired itself is not gathered by the investigating officer and there are no documents to that effect. Now, the application that was filed by the informant and his father on 09.04.2019 with the State is still pending and no final order has been passed. Informant then says that the 2 Gunthas land which was not used for State National Highway is outstanding or it is remaining and 1 Guntha land towards the north of Masjid is also remaining which would be mutated as per the law in the name of his father. So, it is in anticipation. When the land is once acquired, the acquisition cannot be so cancelled unless the Government specifically takes step.

7. The informant is now raising doubts and finger towards the sale deed that has been executed by Jaykumar Jain in favour of the Trust for 6 Gunthas of land. *Prima facie* the documents on record show that Jaykumar was the owner of land admeasuring 56 R + 50 R since 2005. If there is a boundary dispute or existence of the land itself is in question, then it cannot presume that on the basis of such document, cheating has been done or a false and fabricated document has come into existence. No Government Officer appears to be feeling that the Government has been cheated by the applicants. Under such circumstance, it would be abuse of process of law with this material, if the applicants are directed

to face the trial. It can be rather said that a civil dispute has been given a criminal colour and, therefore, this is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Hence, the following order :-

ORDER

I) Both the Criminal Applications stand allowed.

II) The proceedings in Regular Criminal Case No.115 of 2021 pending before the learned Judicial Magistrate First Class, Kannad, District Aurangabad arising out of FIR vide Crime No.407 of 2020 dated 01.10.2021 registered with Kannad City Police Station, Taluka Kannad, District Aurangabad for the offences punishable under Sections 420, 465, 468, 471 read with Section 34 of Indian Penal Code, stands quashed and set aside as against the applicant in Criminal Application No.1821 of 2021 – **Jaykumar Vardhaman Jain** and the applicants in Criminal Application No.2267 of 2020 i.e. (i) **Raiskhan s/o Bhikankhan Pathan**, (ii) **Lalkhan s/o Husenkhan Pathan**, (iii) **Kalim s/o Rafiq Patel**, (iv) **Anis s/o Musa Shaikh**, (v) **Ajijkhan s/o Manwarkhan Pathan**, (vi) **Shabbir s/o Bhikankhan Pathan** and (vii) **Limchand s/o Harsingh Rathod**.

[**SANJAY A. DESHMUKH**]
JUDGE

[**SMT. VIBHA KANKANWADI**]
JUDGE

scm