



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

19 CRIMINAL APPLICATION NO.3107 OF 2022

Shobha Maroti Kadam,
Age 41 yrs., Occ. Agri. & Household,
R/o Kamtha (Bk), Tq. Ardhapur,
Dist. Nanded.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Station,
Shivaji Nagar, Nanded.
- 2 Ankita w/o Rohit Chaparwal,
Age 26 yrs., Occ. Household,
R/o Near Govardhan Ghat Bride,
Nanded, Tq. & Dist. Nanded.

... Respondents

...

Mr. S.P. Katneshwarkar, Advocate for applicant

Mrs. S.N. Deshmukh, APP for respondent No.1

Mr. N.S. Jaju, Advocate for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI &
MANJUSHA DESHPANDE, JJ.

DATE : 17th APRIL, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed initially for quashment of First

Information Report vide Crime No.230/2022 dated 16.06.2022 registered with Police Station, Shivaji Nagar, Nanded, for the offence punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code, 1860 and later on by way of amendment for quashing proceedings in Regular Criminal Case No.730/2024 pending before learned Chief Judicial Magistrate, Nanded.

2 Heard learned Advocate Mr. S.P. Katneshwarkar for applicant, learned APP Mrs. S.N. Deshmukh for respondent No.1 and learned Advocate Mr. N.S. Jaju for respondent No.2.

3 Learned Advocate appearing for applicant submits that present First Information Report is the outcome of application under Section 156(3) of the Code of Criminal Procedure filed by respondent No.2 bearing Criminal Miscellaneous Application No.904/2021 and the order passed by learned Judicial Magistrate First Class, Nanded on 07.06.2022 for investigation, however, learned Magistrate has passed a very cryptic order and had not taken into consideration the facts. Perusal of First Information Report would show that informant contends that her father Anil Panditrao Kadam was owner of land Gat No.103 situated at village Taroda (Kh), Tq. Nanded. He had purchased it in the capacity as partner and the co-purchasers were one Dipak Amrutlal Jaiswal, Jitesh Sudarshan Lolge, Vishnudas Shankarlal

Mundada, Ravikumar Radheshyam Navandar and Omprakash Kishanrao Kadam. Unfortunately, her father expired on 04.10.2008. Prior to his death her father and other partners had executed a Power of Attorney in favour of Dipak Vishnudas Mundada. After the death of her father the Power of Attorney had come to an end as per law. However, thereafter also said Dipak Mundada had executed sale deeds in respect of plots from the said land to various persons. The sale deed in favour of present applicant is dated 26.02.2009. According to informant, all those sale deeds are forged, fabricated and there is a cheating. Learned Advocate for applicant submits that entire charge sheet does not show that present applicant was aware about the fact of death of father of informant at the time of execution of sale deed. Further, if at all the sale deed in favour of applicant is void, then informant ought to have taken recourse to the civil remedy. By no stretch of imagination, it can be stated that sale deed in favour of present applicant was executed by committing forgery for the purpose of cheating. There is absolutely no explanation for delay either in First Information Report or in the application for investigation under Section 156(3) of the Code of Criminal Procedure. Said application also came to be filed in 2021, whereas the sale deed in favour of applicant is in 2009. Hence, it would be an abuse of process of law if applicant is asked to face the trial.

4 Per contra, learned APP as well as learned Advocate for respondent No.2 strongly opposed the application and submitted that the fact is very clear. Father of informant, Dipak Jaiswal and others had purchased the said land by sale deed dated 07.09.2007. Layout was got sanctioned and father of informant executed Power of Attorney in favour of Dipak Vishnudas Mundada, who appears to be the son of partner Vishnudas Shankarlal Mundada. Then informant's father Anil Panditrao Kadam expired on 04.10.2008. However, thereafter Dipak Mundada sold the property in the capacity as Power of Attorney of all original owners i.e. including deceased Anil Kadam. Present applicant is one of the purchasers, but the fact remains that Dipak Mundada had no authority to sell the property/plots when the said Power of Attorney was not in existence due to death of executant and, therefore, certainly, there is a cheating and preparation of false documents.

5 Learned Advocate appearing for respondent No.2 relies on **Skoda Auto Volkswagen (India) Private Limited vs. State of Uttar Pradesh and others** [(2021) 5 SCC 795], wherein it has been held that mere delay on the part of complainant in lodging the complaint by itself be a ground to quash the First Information Report. He further relies on **T. Vengama Naidu vs. T. Dora Swamy Naidu and others** [(2007) 12 SCC 93], wherein it is observed that -

“It cannot be disputed that a private complaint cannot be filed before the learned Magistrate who had made over the said complaint for investigation under Section 156(3) of the Code of Criminal Procedure. That order of the Magistrate has not been challenged. On the basis of that order the police registered a crime probably treating the complaint as the First Information Report. It is settled law that an FIR and the consequent investigation cannot be quashed unless there is no offence spelt out from the same. The law in this respect is settled that the said First Information Report has to be taken on its face value and then it is to be examined as to whether it spells out the offences complained of. There was no question of considering the merits of the allegations contained in the First Information Report at that stage or testing the veracity of allegations.”

Here, the order passed by learned Magistrate on 07.06.2022 has not been challenged, therefore, when investigation is over and charge sheet is filed, let there be trial.

6 The facts are already stated and, therefore, we would constrain ourselves to reproduce them unless there is necessity of the same. Criminal Miscellaneous Application No.904/2021, which was under Section 156(3) of the Code of Criminal Procedure and by order dated 07.06.2022 by observing that the facts constitute information relating to cognizable offence it was sent for investigation under Section 156(3) of the Code of Criminal Procedure. Thereafter, the impugned First Information Report came to be filed on 15.06.2022. Now, the question is, as to whether the contents of application was disclosing offence against present applicant and whether in First Information Report that was so reflected ? Respondent No.2 – original

informant is the purchaser of plot No.32 by sale deed dated 26.02.2009. No doubt, perusal of sale deed in her favour would show that it has been executed by Dipak Vishnudas Mundada in the capacity of Power of Attorney of all the partners/co-owners including deceased Anil Kadam. The application, which was filed by respondent No.2 before learned Magistrate, had not disclosed that after execution of those sale deeds when she came to know about those documents and transactions and why she had not taken any civil remedy to challenge the sale deeds. We are required to consider here that for proving an offence under Section 468 and 471 of the Indian Penal Code there has to be a forgery. Forgery has been defined under Section 463 of the Indian Penal Code. It prescribes - whoever makes any false document or false electronic record, or part of a document or electronic record, with intent to cause damage or injury to the public or any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery. Then Section 464 defines making a false document. Here, on the basis of Power of Attorney when Vishnudas Mundada had executed the sale deed; there was nothing before the learned Magistrate to know that present applicant would have had knowledge about death of Anil Panditrao Kadam on 04.10.2008. The investigation does not reveal that statements of co-owners of deceased Anil

Kadam were taken and at any point of time those other co-owners had given knowledge about death of Anil Kadam to the Power of Attorney Dipak Mundada. Though he is son of co-partner Vishnudas Mundada, the knowledge cannot be presumed. Another fact to be noted is that co-owners of Anil Kadam have not made as co-accused. The logic behind the same is not explained by respondent No.2. Informant cannot restrict the issue of Power of Attorney coming to an end after death of Anil Panditrao Kadam. It also appears that copy of Power of Attorney was not collected by Investigating Officer. Whether all the co-owners executed the Power of Attorney by a single document or it was individual act of giving Power of Attorney to Vishnudas Mundada, is a question. Therefore, whether the sale deed in favour of applicant can be said to be a false document itself is a question. The document is genuine, that is in fact, executed, but then the capacity of the seller is questioned. Whether in such situation it would become a false document or would amount to forgery, then the answer is certainly 'No', because unless the executant and the person in whose favour the document is executed should have the knowledge of a fact which makes the execution unlawful. For that purpose there is nothing on record to show that on the date of execution of sale deed in favour of applicant the applicant had the knowledge about death of Anil.

7 The ratio laid down in **Skoda Auto Volkswagen (India) Private Limited** (supra) cannot be disputed when it is a Three Judge Bench decision of the Hon'ble Supreme Court, but the delay in this case is not the only ground on which First Information Report needs to be quashed and set aside. It is additional point and, that too, without any explanation by informant as to why she had not approached the Civil Court to get the sale deed quashed and set aside. Under the said circumstance, it would be an abuse of process of law if the applicant is directed to face the trial. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Regular Criminal Case No.730/2024 pending before learned Chief Judicial Magistrate, Nanded arising out of First Information Report vide Crime No.230/2022 dated 16.06.2022 registered with Police Station, Shivaji Nagar, Nanded, for the offence punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant **Shobha Maroti Kadam**.

(MANJUSHA DESHPANDE, J.)

(SMT. VIBHA KANKANWADI, J.)

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