IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3901 OF 2024

Basavraj s/o Vishwanathappa Valande
Age: 56 years, Occu.: Agriculture,
R/o. Aurad-Shahajani, Tq. Nilanga,
District Latur. ***.. Applicant***

Versus

1. The State of Maharashtra
Through the Police Station Officer,
Aurad-Shahajani Police Station,
District Latur.

2. Sundarlal s/o Ramnivas Darak
Age: 60 years, Occu.: Business,
R/o. Marwadi Galli, Aurad-Shahajani,
Tq. Nilanga, District Latur,
Now at Row House No.12, Phase-3,
Hake Nagar, Latur,
Taluka and District Latur. ***.. Respondents***

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WITH
CRIMINAL APPLICATION NO.5060 OF 2024

Premnarayan s/o Bhagirath Soni
Age: 74 years, Occu.: Business/Pensioner,
R/o. Aurad-Shahajani, Tq. Nilanga,
District Latur. ***.. Applicant***

Versus

1. The State of Maharashtra
Through the Police Station Officer,
Aurad-Shahajani Police Station,
District Latur.

2. Sundarlal s/o Ramnivas Darak
Age: 60 years, Occu.: Business,
R/o. Marwadi Galli, Aurad-Shahajani,
Tq. Nilanga, District Latur,
Now at Row House No.12, Phase-3,
Hake Nagar, Latur,
Taluka and District Latur. ***.. Respondents***

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Mr. A. D. Chapule, Advocate h/f Mr. N. P. Patil Jamalpurkar, Advocate for applicant in Criminal Application No.3901 of 2024.
Mr. S. S. Gangakhedkar, Advocate for applicant in Criminal Application No.5060 of 2024.
Mrs. R. P. Gour, APP for respondent No.1/State in both the matters.
Mr. S. N. Patne, Advocate for respondent No.2 in both the matters.

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CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.
DATE : 24 APRIL 2025

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

. Both the applications arise out of the same FIR. The applicants in both the applications have been arrayed as accused in the FIR vide Crime No.296 of 2024 dated 18.08.2024 registered with Aurad Shahajani Police Station, District Latur for the offences punishable under Sections 406, 409, 420, 468 read with Section 34 of Indian Penal Code, which came to be registered after the order was passed by learned Judicial Magistrate First Class, Nilanga in Criminal Miscellaneous Application No.76 of 2024 under Section 156(3) of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. A. D. Chapule holding for learned Advocate Mr. N. P. Patil Jamalpurkar for the applicant in Criminal Application No.3901 of 2024, learned Advocate Mr. S. S. Gangakhedkar for the applicant in Criminal Application No.5060 of 2024, learned APP Mrs. R. P. Gour for respondent No.1/State in both the matters and learned Advocate Mr. S. N. Patne for respondent No.2 in both the

matters.

3. The applicants contend that a Public Trust was created in the year 1998 by name Shardopasak Shikshan Sanstha, Aurad Shahajani, Taluka Nilanga, District Latur. The said Trust purchased land admeasuring 85 R in Gut No.188 vide sale deed dated 19.05.1998. The said sale deed was executed by main Panch of Charandas Baba Shri. Ramniwas Balkishanji Darak. Respondent No.2 is the son of Ramniwas Darak. Applicant Premnarayan Bhagirath Soni and others had signed the said document in the capacity as consent giver. The applicants state that said Charandas Baba was not a Public Trust registered under the Maharashtra Public Trust Act and, therefore, it cannot be stated that respondent No.2 in any way concerned with the said land. The Trust i.e. Sharadopasak Shikshan Sanstha purchased the said property for raising educational institution. Applicant Basavraj Valande was neither member, nor Trustee of the Sanstha in the year 1998. He came to be enrolled as member by resolution dated 21.08.2011. Even applicant Premnarayan was also not Trustee, but after death of 5 trustees, said applicant came to be added as trustee by resolution dated 07.06.2020. Now, the informant contends in the FIR that the said sale deed that was got executed vide sale deed No.1459 of 1998 on 19.05.1998 was without the permission of competent authority. The said land was Inam land which could not have been sold without the permission of the competent

authority. Even after the State Government had given directions, the said land was not returned by the institution. Thus, according to the informant, the trustees have tried to grab the property by an illegal transaction and for that purpose, then it is stated that offence has been committed under Sections 406, 409, 420, 468 read with Section 34 of Indian Penal Code.

4. Learned Advocates appearing for both the applicants submit that in fact when the Trust was started and the impugned sale deed was executed in 1998, there were in all nine trustees. On the day when the FIR came to be lodged i.e. on 18.08.2024, only one trustee out of those original nine was alive. The present applicants came to be added as trustees at much later point of time as aforesaid. Therefore, none of the ingredients of the offence can be said to have been made out against the present applicants. In the impugned order dated 13.08.2024, the learned Magistrate while passing the order under Section 156(3) of the Code of Criminal Procedure had not considered the basic point as to who were the trustees when the sale deed got executed. It was also not considered that respondent No.2 had not approached the Civil Court or the Charity Commissioner to make any kind of agitation. In fact, respondent No.2 himself was also a trustee in Shardopasak Shikshan Sanstha for some period. His membership was cancelled by general body meeting of the Public Trust by passing unanimous resolution on

07.06.2020. The original owner Ramnivas expired in 2020 and thereafter respondent No.2 started illegal activities detrimental to the education trust and, therefore, he has been removed. After enjoying the position in the Trust, now, respondent No.2 cannot say that his father way back in 1998 sold the property to the Trust without seeking necessary permission. The basic ingredients of the offence are not attracted and it cannot be stated that whatever document of sale deed has been executed is a false document. At the most, the dispute is of civil nature, but for ulterior motive, respondent no.2 being annoyed with the fact of cancellation of his membership with *mala fide* intention, has filed the present FIR and, therefore, the FIR needs to be quashed and set aside.

5. Learned Advocates appearing for the applicants rely on the decisions in ***Rakhab Birani and another Vs. State of Uttar Pradesh and another, [2025 SCC Online SC 823]****,* wherein the Hon'ble Supreme Court has made distinction between the criminal breach of trust and breach of contract.

6. Per contra, the learned APP and learned Advocate appearing for respondent No.2 strongly opposed the applications and submitted that the investigation is still going on and, therefore, it would be premature to quash the FIR, which is of a serious nature. The documents would show that the land which was sold in 1998 was an Inam land and it could not

have been sold without the proper sanction by the appropriate authority. Yet, the sale deed was got executed and the Trust is enjoying the property.

7. Here, we would like to take note of the legal position that has been summarized in ***Rekhab Birani (Supra).*** Note has been taken of the earlier decisions in the matter and taking into consideration the confusion still persisting, the law has been laid down. It has been observed that the Court should distinguish between a civil wrong in the form of a breach of contract, non payment of money or disregard to and violation of contractual terms; and criminal offence under Sections 420 and 406 of the Code of Criminal Procedure, the ingredients of which are quite different and requires *mens rea* at the time when the contract is entered into itself to not abide by the terms thereof. Note was then taken on the decisions in ***Lalit Chaturvedi and Others v. State of Uttar Pradesh and Another, [2024 SCC Online SC 171], Mohammed Ibrahim and Others v. State of Bihar and Another, (2009) 8 SCC 751, V.Y. Jose and Another v. State of Gujarat and Another, (2009) 3 SCC 78, Delhi Race Club (1940) Limited and Others v. State of Uttar Pradesh and Another, (2024) 10 SCC 690, Kunti and Another v. State of Uttar Pradesh and Another, (2023) 6 SCC 109*** and ***Sarabjit Kaur v. State of Punjab and Another, (2023) 5 SCC 360,*** thereupon it is observed that :-

> "19. It is the duty and obligation of the court to exercise a great deal of caution in issuing process, particularly when the matter is essentially of civil nature.13 The prevalent impression that civil remedies, being time-consuming, do not adequately protect the interests of creditors or lenders should be discouraged and rejected as criminal procedure cannot be used to apply pressure.14 Failure to do so results in the breakdown of the rule of law and amounts to misuse and abuse of the legal process."

Further, in ***Thermax Limited and Others v. K.M. Johny and Others (2011) 13 SCC 412***, it was held that the Courts should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegation may constitute both civil and criminal wrongs. There has to be a conscious application of mind on these aspects by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Specific note was taken on the decision in ***Sharif Ahmed Vs. State of Uttar Pradesh,*** wherein the main offences were under Sections 406, 415, 420, 503 and 506 of Indian Penal Code :-

> "36. An offence under Section 406 of the IPC requires entrustment, which carries the implication that a person handing over any property or on whose behalf the property is handed over, continues to be the owner of the said property.

> Further, the person handing over the property must have confidence in the person taking the property to create a fiduciary relationship between them. A normal transaction of sale or exchange of money/consideration does not amount to entrustment. Clearly, the charge/offence of Section 406 IPC is not even remotely made out.
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> 37. The chargesheet states that the offence under Section 420 is not made out. The offence of cheating under Section 415 of the IPC requires dishonest inducement, delivering of a property as a result of the inducement, and damage or harm to the person so induced. The offence of cheating is established when the dishonest intention exists at the time when the contract or agreement is entered, for the essential ingredient of the offence of cheating consists of fraudulent or dishonest inducement of a person by deceiving him to deliver any property, to do or omit to do anything which he would not do or omit if he had not been deceived. As per the investigating officer, no fraudulent and dishonest inducement is made out or established at the time when the agreement was entered."

Thus, in this case also, we are required to consider whether the facts disclose the offences under which the FIR is registered or even whether any offence has been made out or not.

8. Perusal of the FIR would show the fact regarding sale of 85 R land from out of 1 H 61 R land situated in Gut No.188 belonging to Charandas Baba Devsthan in the year 1998. It is then stated that since

it was Inam land, it requires permission from the competent authority. It is then stated that the seller could not have sold the property in the capacity as Panch and in spite of Government's order, the land has not been returned, thereby there is intention to grab the property of Devsthan and then it is stated that false documents have been prepared. The FIR is as cryptic as it is and intentionally kept vague. There is no reference to the order of the State Government which is stated to be violated. Which document is stated to have been forged or falsely prepared has not been stated. Here, it is to be noted that the intention of respondent No.2 appears to be that the sale deed that is stated to have been executed on 19.05.1998 itself is a forged document, but it is to be also noted that respondent No.2's father expired in 2020. Till then it appears that he had not made any complaint or lodged FIR against the Trust in respect of said sale deed. As regards offence of forgery, the same is defined under section 463 of the Indian Penal Code. Section 463 of Indian Penal Code provides that whoever makes any false document with an 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 any property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. Thus making of a false document is essential ingredient of the offence of forgery. "Making of a false document" is dealt with in section 464 of the

Indian Penal Code. Alteration of a document without lawful authority, dishonestly or fraudulently amounts to making of a false document. In order to prove offence under Section 420 of Indian Penal Code, we will have to consider Section 415 of Indian Penal Code. Respondent No.2 was not the executant to the said sale deed and, therefore, whatever the representations those were allegedly made to his father were not within the knowledge of respondent No.2, nor he claims so in the FIR. Applicant Basavraj Valande was not even in the Trust on the date when the sale deed was executed. There was no question of criminal breach of trust, as there was no relationship of Trust between the seller and the buyer. It was the pure civil transaction i.e. transaction of sale, that too for consideration. Another fact to be noted is that even on the day of the sale, the educational institution was a registered Trust. The copy of the extract of Schedule III vide Rule 13(1) of the Maharashtra Public Trust Act i.e. for immovable property shows that the property which was purchased in the year 1998 was shown as Trust property. At no point of time till 2020 nobody had raised objection for the same. There is no denial to the fact that by resolution dated 07.06.2020, respondent No.2's membership was cancelled by general body meeting of the Trust. There is also no dispute regarding the minutes those have been placed on record of the meeting of Board of Directors dated 21.08.2011 wherein in resolution No.7 at Serial No.5 it appears that the brother of respondent

No.2 was included as one of the trustee. Thus, since 2011 to 2020 even the brother of respondent No.2 had not raised any objection in respect of the said sale deed dated 19.05.1998. Therefore, certainly a civil dispute has been tried to be given a criminal colour with some ulterior motive and, therefore, the case falls within the parameters laid down in ***State of Haryana and others Vs. Ch. Bhajanlal and others, [AIR 1992 SC 604].*** Therefore, both the applications deserve to be allowed. Hence, the following order :-

ORDER

I) Both the Criminal Applications stand allowed.

II) The FIR vide Crime No.296 of 2024 dated 18.08.2024 registered with Aurad Shahajani Police Station, District Latur for the offences punishable under Sections 406, 409, 420, 468 read with Section 34 of Indian Penal Code, stand quashed and set aside as against the applicant in Criminal Application No.3901 of 2024 - **Basavraj s/o Vishwanathappa Valande** and the applicant in Criminal Application No.5060 of 20254 - **Premnarayan s/o Bhagirath Soni.**

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm