



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3209 OF 2023

1. Ganesh s/o Gopaldas Mundada
Age: 33 years, Occu.: Business,
H. No.10-2-1002, Matrutwa Niwas,
Old Kautha, Behind Gurudwara,
Kautha, Tq. And Dist. Nanded,
2. Shyam s/o Gopaldas Mundada,
Age: 31 years, Occu.: Business,
H. No.10-2-1002, Matrutwa Niwas,
Old Kautha, Behind Gurudwara,
Kautha, Tq. And Dist. Nanded.
3. Meena w/o Gopaldas Mundada
Age: 52 years, Occu.: Housewife/Business,
H. No.10-2-1002, Matrutwa Niwas,
Old Kautha, Behind Gurudwara,
Kautha, Tq. And Dist. Nanded.

.. Applicants

Versus

1. The State of Maharashtra
Through Police Inspector,
Vazirabad Police Station,
Tq. And Dist. Nanded.
2. Pandurang s/o Sakharam Patil
Age: 55 years, Occu.: Business,
R/o. Patil Dairy, Parsi Anjuman Trust,
Vazirabad, Nanded.
3. Prakash s/o Adinath Sunke
Age: 46 years, Occu.: Business,
R/o.21/22, Sankalp Nivas,
Taroda Bk. Road,
Opp. To Omkareshwar Nagar,
Balaji Nagar, Nanded.
4. Anand s/o Amarchand Bhandari
Age: 36 years, Occu.: Pigme Agent,
R/o. Shahid Pura, Basakasing Colony,

Post Vazirabad, Nanded.

5. Gangadhar s/o Laxman Patawar,
Age: 61 years, Occu.: Business,
R/o. In front of Gate No.1,
Gurudwara, Nanded.

.. Respondents

...
Mr. B. S. Choure, Advocate for the applicants.
Mr. S. A. Gaikwad, APP for respondent No.1/State.
Mr. P. K. Wagh, Advocate for respondent Nos.2 to 5.
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**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

DATE : 27 MARCH 2025

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

. Present application has been filed by invoking the powers under Section 482 of the Code of Criminal Procedure for quashing the proceedings in Regular Criminal Case No.734 of 22020 pending before the learned Chief Judicial Magistrate, Nanded arising out of the First Information Report vide Crime No.48 of 2019 dated 07.02.2019 registered with Vazirabad Police Station, District Nanded for the offences punishable under Sections 406, 420, 468 read with Section 34 of Indian Penal Code, under Sections 4, 5, 11, 79 of the Chit Funds Act, 1982.

2. Heard learned Advocate Mr. B. S. Choure for the applicants, learned APP Mr. S. A. Gaikwad for respondent No.1/State and learned Advocate Mr. P. K. Wagh for respondent Nos.2 to 5.

3. Learned Advocate for the applicants has taken us through the charge-sheet including the FIR. He submits that the applicants were running a business of chit fund under the name and style as “Mundada Chit Fund Pvt. Ltd.” and it is registered under the Companies Act. The certificate of registration is issued by the Joint Registrar of Chit Fund and the said company is also registered with GST. Applicant Nos.1 and 3 are the Directors, but applicant No.2 is not the Director. There were 20 members with monthly installment of Rs.20,000/-. The informant has stated that he has paid nine installments amounting to Rs.1,80,000/- for which he has received the receipts. The informant says that when he visited the office of the applicants on 20.11.2018, he got the knowledge that the applicants have absconded and, therefore, it appears that in panic, he filed the FIR. The applicants and respondent Nos.2 to 5 have entered into the compromise and amicably settled their dispute. Respondent Nos.2 to 5 i.e. the informant and the victims have agreed to withdraw the proceedings by giving no objection for quashing the FIR and the proceedings. Even on merits, no offence is committed.

4. Learned Advocate for respondent Nos.2 to 5 have filed affidavits stating that applicant Nos.1 to 3 have amicably settled the dispute with them. The applicants have paid the amount which was claimed in the FIR and the statements and, therefore, they have no objection, but to quash the FIR and the proceedings.

5. Per contra, the learned APP strongly opposes the application and submits that when the applicants have cheated so many persons and had kept their hard earned money with them, then this cannot be taken as a fit case where the proceedings need to be quashed and set aside. If the charge-sheet is perused, then applicant Nos.1 to 3 have been shown to be absconding and proclamation has been issued against them under Section 82 of the Code of Criminal Procedure.

6. It is to be noted that initially the FIR of respondent No.2 appears to have not been recorded by police and, therefore, he had approached learned Judicial Magistrate First Class, Nanded for directions for investigation under Section 156(3) of the Code of Criminal Procedure. At that time, it was stated that there were 20 members in one group. The informant appears to be member No.7. Though initially the receipts were given for the payment of installments to the informant by the company of the applicants, yet when he went to the institution on 20.11.2018, at that time, the Branch was closed. Nobody was responding on phone also and, therefore, there was a cheating of the persons. Though it is stated that the applicants have similarly cheated respondent Nos.3 to 5, their compromise has taken place at much later point of time. By order dated 20.07.2020, the learned Chief Judicial Magistrate, Nanded has ordered proclamation against accused Nos.1 to 3 i.e. the present applicants under Section 82 of the Code of Criminal Procedure. Merely, now the

matter is compromised, it cannot be said that this Court should exercise its powers under Section 482 of the Code of Criminal Procedure. The charge-sheet also shows that the offences vide Crime Nos.43 of 2019, 44 of 2019, 45 of 2019, 46 of 2019, 47 of 2019 and 49 of 2019 have also been lodged against the present applicants and co-accused for the offences punishable under Sections 406, 420, 468, 120-B read with Section 34 of Indian Penal Code, 4, 5, 11, 79 of the Chit Fund Act, 1982. Reference can be made to the decisions of the Hon'ble Supreme Court in ***Air Customs Officer IGI Vs. Pramod Kumar Dhamija, [(2016) SIR (SC) 934]*** and ***Virender Prasad Singh Vs. Rajesh Bhardwaj and others, [(2012) ALLMR (Cri.) 1782]***, wherein since the accused was proclaimed offender, proclamation under Section 82 of the Code of Criminal Procedure was issued and the High Court's view that in respect of proclaimed offender powers under Section 482 of the Code of Criminal Procedure cannot be exercised was upheld, however, the order of the High Court was quashed and set aside on facts. Therefore, this is not a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure.

7. Hence, the application stands rejected.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm