



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

CRIMINAL APPLICATION NO. 3483 OF 2023

1. Sanjay S/o Shyamrao Hiwrale
Age : 50 years, Occ : Agri.,
R/o Jalgaon, Tq. & Dist. Aurangabad
2. Kakasaheb S/o Dhondiram Bankar
Age : 52 years, Occ : Agriculture,
R/o Rathi Sansar, Pisadevi Road,
Aurangabad.
3. Bhikdas S/o Rambhaji Mhaske
Age : 54 years, Occ : Business,
R/o Osmanpura, Aurangabad.
4. Satish S/o Trimbak Shejwal
Age : 42 years, Occ : Business,
R/o Jai Bhavani Nagar,
Aurangabad.

..APPLICANTS

-VERSUS-

1. The State of Maharashtra
Through City Chowk Police Station,
Aurangabad.
2. Anuradha Lakshman Chanaghate
Age : 75 years, Occ : Household,
R/o At Post : Pimpalkheda, Tq. Gangapur,
Dist. Aurangabad.

..RESPONDENTS

Advocate for the applicants : Mr. Shaikh Afreen R.
APP for Respondent- State : Mr. N.R. Dayama
Advocate for respondent No.2 : Mr. A.P. Bhandari

CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.

DATED : 15th JANUARY, 2025

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

. The present application is filed under Section 482 of the Code of Criminal Procedure in order to challenge F.I.R. No.0078/2018 dated 28.03.2018 registered with City Chowk Police Station, Aurangabad (City) for the offences punishable under Sections 420, 468, 471, 385 read with Section 34 of the Indian Penal Code (I.P.C.). The Applicants are arrayed Accused Nos.1 to 4 in the matter. Respondent No.2 is the informant.

2. Respondent No.2 has lodged the F.I.R. with respect to agricultural land bearing Survey No.24/3 of Bhavsingpura, Aurangabad. She claims that the land admeasuring 5 Acres 11 R is her father's ancestral property. She states that in the partition held in the year 2014, she has received 0.37 HR in the said land. Similar share of 0.37 HR was received by her two sisters namely Shakuntalabai Kale and Babanabai Kale. Thus, three sisters became owners of 1.11 HR land in said survey no.24/3. It is thereafter stated that this 1.11 HR land was gifted by her and her two sisters to the nephew Sandip S/o Jankiram Lokhande, vide registered gift deed dated 05.01.2016. She states that present Applicant Nos.1 and 2 had raised objection with respect to mutation of the name of Sandip. According to her, on making inquires

with respect to the objection, she realized that Applicant Nos.1 and 2 had forged a document titled as “**Adhikar Patra**” dated 13.10.2014 showing that she along with her two sisters had executed the said document on receipt of amount of Rs.6,00,000/- in cash from the Applicants. She has alleged that they had never executed the document dated 13.10.2014 and disputes three thumb impressions appearing against their names as executors of the said document. The contents of the said document dated 13.10.2014 indicate that three sisters have mentioned that they are owners of 1.11 HR land in gut No.24/3, however, due to their old age and illiteracy, they are unable to look after works in relation to the said land pertaining to banking, revenue and personal work, and therefore, Applicant No.1 and one another was being authorized by them to perform all the works relating to sale of land, all acts and deeds in relation to revenue matters and banking transactions with respect to the said land. It is recorded that the three sisters had received a sum of Rs.6,00,000/- in cash in lieu of the said document.

3. On the basis of the F.I.R., Respondent No.1 has conducted investigation and has filed charge-sheet dated 18.03.2020, vide Final Report No.55/2020. Thereafter, a criminal case, being Regular Criminal Case No.640/2020 is registered against the Applicants and one another.

4. Shri Shaikh Afreen R., learned counsel for the Applicants states that Respondent No.2 and her sisters had executed the said document in favour of Applicant Nos.1 and 2. They have received a sum of Rs.6,00,000/- from Applicant Nos.1 and 2 and have thereafter executed the gift deed with respect to the property in favour of their nephew Sandip. He states that Applicant Nos.1 and 2 have been cheated by Respondent No.2 and her sisters. He argues that dispute in relations to the said document is pending adjudication before the Competent Civil Court in Regular Civil Suit No.294/2016 and Regular Civil Suit No.708/2020. He states that Regular Civil Suit No.294/2016 is filed by Applicant Nos.1 and 2 against Respondent No.2 and her sisters for recovery of sum of Rs.6,00,000/- paid as per the document dated 13.10.2014 and said suit is pending. He states that document dated 13.10.2014 is the foundation of the said civil suit and the veracity of the said document will be adjudicated by the learned Civil Court. Likewise, he also states that based on the gift deed executed in his favour, Sandip, the vendor of Respondent No.2 has entered into agreement with one Unique Buildcon for development and sale of the property, as a consequence of which the Applicants have filed suit, being Regular Civil Suit No.708/2020 against Sandip and Unique Buildcon, which is also pending adjudication before the competent Civil

Court. The learned counsel states that the dispute, if any, between parties is a purely civil dispute. The document dated 13.10.2014 is not challenged by Respondent No.2 or her sisters before any Civil Court. He therefore urges that Respondent No.2 has abused the process of law by setting criminal law in motion with respect to a purely civil matter. He, therefore, states that the F.I.R. should be quashed.

5. Shri N.R. Dayama, learned APP appearing for the State and Shri A.P. Bhandari, learned counsel for Respondent No.2 have strenuously opposed the contentions raised by learned counsel for the applicants. They state that merely because a transaction may give rise to a civil dispute or merely because civil rights of parties are involved in the matter, it cannot be said that criminal law cannot be set into motion. They state that in offences pertaining to cheating, forgery of documents etc., some over the property will always been involved and as such, such transaction will always give rise to civil claim. However, only because the civil claim is involved, it cannot be said that criminal law can never be set in motion. They state that cheating and forgery are defined to be offences under law, which also provide for appropriate punishment in case the same is proved. They further contend that there is a clear and unequivocal allegation that the document dated 13.10.2014 is forged and fabricated document. Respondent No.2 has

specifically disputed execution of the document and her thumb impression over the same. They, therefore, state that at this stage, F.I.R. cannot be quashed and the matter can come to an end after the full-dressed trial. They, therefore, pray for dismissal of the application.

6. Having heard the rival submissions and on perusal of the F.I.R., charge-sheet and other material on record and particularly the disputed document, we are of the opinion that several disputed questions arise for consideration in the matter, which cannot be adjudicated in a proceeding under Section 482 of the Code of Criminal Procedure. Respondent No.2 has specifically disputed the execution of the document so also her alleged thumb impression. Statements of her sisters have been recorded during the course of investigation and they have also disputed execution of the document and their thumb impression over it. Document is not registered or notarized. The payment of amount allegedly paid is stated to be paid in cash. The names of applicant Nos.1 and 2 are typed side by side as against one below the other, which is normally done while preparing any document. The name of Applicant No.2 is typed at the right side of the document which is not in symmetry with the names of Applicant No.1 and Respondent No.2 and her two sisters. At page no.2 of the document, name of Applicant No.1 alone is mentioned. The name of

Applicant No.2 is not mentioned as person in whose favour authority is granted. However, after the name of Applicant No.1 word “*Itar*” (another) is written by hand. In these circumstances, we are of the opinion that the truth will be unfolded only upon a trial. Having regard to the limited scope of Section 482 of the Code of Criminal Procedure, we do not intend to adjudicate such disputed questions of facts in the present proceeding.

7. As regards other contention of the learned counsel for the Applicants that the dispute is a purely civil dispute, which is pending adjudication before competent Civil Court in two separate suits, and therefore, criminal law cannot be set in motion, we are not impressed with the said submission. We accept the contention of the learned APP that in every matter pertaining to Section 420 of the IPC as also Sections 465, 467, 468, 471 of the IPC, some civil rights with respect to property will be involved, and therefore, only because the parties or any one of them approached the Civil Court for adjudication of their civil rights cannot be a ground for foreclosing criminal prosecution, if the ingredients of said provisions are made out. We agree with the submission that in a given case, civil and criminal proceeding can be simultaneously prosecuted with respect to the same transaction. Facts of the present case are such that civil and criminal proceeding can be

prosecuted with respect to the subject matter.

8. In the light of the aforesaid discussion, we are not inclined to grant any relief to the applicants. Criminal Application, therefore, stands rejected.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/