



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.4293 OF 2024

Mrs. Jayshri Sudhakar Sawadatkar,
Age-62 years, Occu:Household,
R/o-Swavnra Nagar, Near Ganesh Mandir,
Buldhana

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
(Through Police Station Pundlik Nagar),
Tq. & Dist-Aurangabad,
- 2) Sunil Pandurang Raut,
Age-Major, Occu:Business,
R/o-Sahas Cooperative Housing
Society, Garkheda Parisar,
Aurangabad.

...RESPONDENTS

...
Mr. Anandsingh S. Bayas Advocate for Applicant.
Mr. G.A. Kulkarni, A.P.P. for Respondent No.1.
...

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

DATE : 5th FEBRUARY, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed for quashing the First Information Report (for short "the FIR") vide Crime No.15 of

2024 registered with Pundliknagar Police Station, Aurangabad on 19th January 2024 for the offence punishable under Sections 406, 420, 447, 423, 504, 506 of the Indian Penal Code which appears to be in response to the order dated 25th July 2022 in Criminal Misc. Application No.1948 of 2022 under Section 156(3) of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. Bayas for the applicant and learned APP Mr. Kulkarni for respondent No.1. There is no necessity to issue notice to respondent No.2.

3. Learned Advocate for the applicant has vehemently submitted after taking us through the contents of the FIR and other documents on which the applicant is relying that the applicant had in fact purchased two plots of 265.55 and 282.80 Square Meters from original owners, Mr. Datta Ganesh Deshkar, Nila Sharad Chobe, Lila Yadav Naik and Meera Ashok Kamdar. They were the owners of survey NO.52/2/C admeasuring 1 Acre and 39 R. The registered sale deed in favour of the applicant executed on 16th December 1987. The remaining portion of the land from the said survey number was sold to Sahas Cooperative Gruha Nirman Sanstha by registered sale deed dated 15th April

1988 and 6th May 1988. The applicant had raised compound wall and a tin shed for the watchman after the sale deed in her favour. The cooperative society had applied for layout plan of entire plot and it was duly sanctioned by the municipal corporation, Aurangabad on 22nd August 1988. Then the said society had applied for N.A. permission. The applicant submits that while applying for N.A. permission the land which was purchased by the applicant was also incorporated in the application and no separate portion was shown in the name of the applicant. The society had then demarcated 20 plots in 1988 including two plots owned by the applicant and the number which was given in the sanctioned plan was then renumbered. Then applicant had taken the P.R. Card from the corporation. Thus she is the owner and possessor of the said two plots. The applicant usually stays at Buldhana with her husband but comes occasionally for the management of the property. Till 2021 everything was smooth but then respondent No.2 informant had started harassment to her thereby trying to encroach upon the plots owned by the applicant. She had registered non cognizable reports against respondent No.2. Inquiry was conducted in which statement of President of the society was recorded, wherein the president had accepted the ownership of the applicant. The

mutation entry has also been taken by the Tahsildar. It is the case of the applicant that one Dilip Trimbak Dalvi, who is the relative of the informant, had prepared forged allotment letter on the letter head of the society. Dilip Dalvi expired on 5th April 2013 and after his death, it was projected that the plots were allotted to Mangalabai, being the legal heir of Dilip Dalvi. The informant contends that he has purchased the said plots from Ravindra Dalvi, who is the son of Mangalabai, upon the gift deed executed by Mangalabai in favour of Ravindra. However the society is not supporting all the facts. Now respondent No.2 – informant is claiming the ownership. He had also filed the Regular Civil Suit No.1457 of 2022 before the learned Civil Judge Junior Division, Aurangabad for declaration and injunction. Interim order of injunction has been passed against the applicant which the applicant had challenged in Misc. Civil Appeal No.159 of 2023 and 160 of 2023 before the learned District Judge, Aurangabad and those appeals have been turned down. Now the said matter is pending before this Court in a Writ Petition. The applicant had tried to file complaint / FIR alleging forgery and other offences against respondent No.2 – informant, however, it was not got recorded and therefore she had approached the learned Judicial Magistrate First Class, Aurangabad for seeking

investigation under Section 156(3) of the Code of Criminal Procedure. The said compliant has been directed to be investigated under Section 156(3) of the Code of Criminal Procedure by the learned Magistrate by order dated 25th July 2022 and thereupon an offence vide Crime No.299 of 2023 has been registered. Now respondent No.2 appears to have filed the application i.e. Criminal M.A. No. 1948 of 2022 for directions under Section 156(3) of the Code of Criminal Procedure, which came to be allowed by the learned J.M.F.C., Aurangabad on 25th July 2022 and on the basis of the same, the FIR vide Crime No.15 of 2024 has been registered on 19th January 2024 against the applicant which is alleged to be in respect of an incident dated 8th November 2021.

4. Learned Advocate for the applicant submits that the said complaint and the FIR is after a delay of more than three years. The applicant is 60 years old lady, yet the allegations under Section 423, 504, 506 of the Indian Penal Code have been levelled. The present FIR is nothing but the counter blast to the FIR that has been lodged by the applicant and therefore, it would be unjust to ask the applicant to face the trial.

5. We have taken the facts in detail just to narrow down the dispute. No doubt there is registered sale deed in favour of the applicant in respect of plot Nos. 17 and 18 from Survey No.52/2/C as narrated aforesaid. However, it is to be noted that even at this prima facie stage the fact will have to be noted is that a competent Civil Court has passed an injunction order against the applicant which has then been confirmed in Civil Misc. Appeal by the learned District Court. Learned Advocate for the applicant, upon inquiry, submits that there is no stay to those orders. Though the writ petition by the applicant is pending before this Court, we will have to consider the prima facie position against the applicant here. Further, as aforesaid, the facts are clear enough in saying that both the parties are claiming the ownership and possession. Therefore, it becomes the disputed question of facts which cannot be gone into in the proceedings under Section 482 of the Code of Criminal Procedure. Whether the present FIR is a counter blast to the FIR lodged by the applicant, will have to be then proved by the applicant. We will have to then also consider that the suit was filed by the respondent No.2 – informant on 21st September 2022 and the FIR by the applicant is stated to be dated 12th

August 2023, yet the Civil Court had considered the prima facie case in favour of respondent No.2.

6. The investigation is still going on and therefore, it would be premature to observe that the applicant, who is 60 years old, would not have committed an offence under Sections 423, 504, 506 of the Indian Penal Code.

7. Case is not made out for exercising powers under Section 482 of the Code of Criminal Procedure. Therefore, the Application stands rejected, at the threshold.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/FEB25