



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

33 CRIMINAL APPLICATION NO. 4619 OF 2024

Bhaiyalal S/o Babulal Nand (as mentioned in FIR)
Wrongly mentioned in F.I.R. Correct name is:
Prakash @ Bhaiyalal S/o Babulal Ahire/Nand
Age: 78 Years; Occu: Business
R/o: Mahavir Chowk, Jalna,
Taluka and District: Jalna

.. Applicant

Versus

1. State of Maharashtra
Represented through the Police officers of
Sadar Bazar Police Station, Jalna
Taluka and District: Jalna.
2. Nitin S/o Ambikaprasad Pitti,
Age: 46 Years; Oecu: Service in Private Sector,
R/o: A-1, 1203, Prism Rohan Nilay,
Near Bremen Circle, Aundh, Pune,
Taluka: Aundh and District: Pune.

.. Respondents

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Mrs. Rashmi S. Kulkarni h/f Mr. Sanket S. Kulkarni, Advocate for Applicant.
Mrs. P. R. Bharaswadkar, APP for Respondent No.1/State.
Mr. S. G. Dodya, Advocate, Advocate for Respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.**

DATE : 09 SEPTEMBER 2025

ORDER :

. Present application has been filed for quashment of the FIR vide
Crime No.820 of 2024 dated 03.08.2024 registered with Sadar Bazar
Police Station, District Jalna for the offences punishable under Sections

126(2), 351(2), 3(5) of Bharatiya Nyaya Sanhita, 2023.

2. Heard learned Advocate Mrs. Rashmi S. Kulkarni holding for learned Advocate Mr. Sanket S. Kulkarni for the applicant, learned APP Mrs. P. R. Bharaswadkar for respondent No.1/State and learned Advocate Mr. S. G. Dodya for respondent No.2.

3. Learned Advocate appearing for the applicant has taken us through the FIR and submits that the applicant is the purchaser of the part the of property i.e. to the extent of 89.94 square meters from City Survey No.10678 situated at Jalna. He had purchased the same from Sarita Setumadhav Pitti, Aakash Setumadhav Pitti and Chaitanya Setumadhav Pitti, to which three more are the persons, who had given consent and the sale deed was executed on 04.05.2023. Present respondent No.2/informant filed the said FIR on 03.08.2024 stating that City Survey No.10678 situated at Gavlipura Jalna is the ancestral property and standing in the name of informant's father and five brothers of informant's father. The total area of ancestral property is 449.70 square meters. Informant's uncle Bhagwatprasad expired in 2004 and Bhagwatprasad's son Setumadhav expired in 2022. The vendors of the applicant are the legal heirs of Setumadhav. Informant states that around 6.00 p.m. on 20.05.2023, he has received phone call from one of their relative from Jalna making inquiry as to whether he has sold the land.

Informant told that person that he has not sold, but then he had made enquiry with Aakash as to whether he has sold the land. Aakash told him that the land of his share/their share has been sold to the present applicant and he would be shifting to another place. Informant says that he had given information about the said fact to the other relatives. There was a meeting on 20.06.2023 between informant, other cousin brothers and Aakash, wherein also Aakash maintained that he has sold the land of his share. The informant states that the present applicant was found possessing that entire land and, therefore, they made inquiry with the applicant, who also told that he has purchased entire land and they should do whatever they want. It is stated that when the cousin brothers of the informant went near the house, at that time, the applicant and his family members were present and when the cousin brothers intended to enter the house, which was in the share of the informant and others, then the applicant and his family members had raised objection. They were threatened and, therefore, those cousin brothers left the place. They had paid visit to the land record office and then it was stated that such sale deed was executed on 04.05.2023. It is then stated in the FIR that several times there were attempts on the part of the informant and his cousin brothers to enter the house, at that time, they were restrained by the present applicant. The incident got repeated around 11.00 a.m. on 01.08.2024 and then the FIR came to be filed.

4. Learned Advocate for the applicant submits that there is total suppression of the fact that the informant and the cousin brothers had filed Special Civil Suit No.290 of 2024 before the learned Civil Judge Senior Division, Jalna and it was prior to the FIR. In that suit, the prayer was for cancellation of the sale deed of the applicant and handing over of the possession. The plaintiffs/informant and his cousin brothers were claiming right of pre-emption. Now, when the matter was sub judice, the civil rights would be decided in the said suit. Now, with some fake cause of action, the present FIR has been lodged, certainly to pressurize the applicant. The ingredients of the offence cannot be said to be made out and out of the Sections invoked by the police authorities, only Section 126(2) of Bharatiya Nyaya Sanhita, 2023 is cognizable in nature.

5. Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the application and submitted that the property was belonging to the ancestors and each of the sharer had equal right. The sale deed could not have taken place with demarcating the property and on the basis of the said sale deed, it appears that the applicant is claiming possession and right over the entire property. Intention of the applicant is clear that he wants to grab the property and, therefore, when he resisted the informant and the cousins of the informant, then this cannot be taken as a case for quashing of the FIR. Learned APP further points out that there are criminal antecedents

against the applicant.

6. The first and the foremost fact to be noted from the scope of the inquiry that is required to be undertaken while deciding application under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, it is required to be seen as to whether the ingredients of the offence are made out. Secondly, out of those Sections which have been invoked, only Section 126(2) of Bharatiya Nyaya Sanhita, 2023 is cognizable and other Section i.e. Section 351(2) of Bharatiya Nyaya Sanhita is non cognizable. In the entire FIR, it has not been stated or only reference has been made regarding the southern side 89.94 square meters area, which was sold by one of the branch to the applicant, but what was remaining and where exactly the obstruction was made has not been stated. By mere use of the word rest of the area of their ownership where they were allegedly obstructed cannot amount to an offence under Section 126(2) of the Bharatiya Nyaya Sanhita.

7. If we peruse the public document i.e. the sale deed, the area has been demarcated which has been sold out. Now, that sale deed is the subject matter in Special Civil Suit No.290 of 2024 and if we see the prayers, then the plaintiffs including the informant had prayed for declaring the said sale deed as illegal, null and void. However, in the alternative, they have prayed for execution of sale deed in respect of the

very same property by defendant Nos.1 to 7. When such right under pre-emption is claimed, then the execution of such sale deed can be said to have been admitted. Further, that alternative prayer is only for prayer clause 'B' i.e. declaration in respect of sale deed and alternative is execution of sale deed in favour of the plaintiffs, but the independent prayer 'C' has been made for decree for recovery of possession of the suit property by defendant No.1 and his family members representative etc. thereby directing them to handover the suit property to the plaintiffs. Perpetual injunction has been prayed in respect of dismantling the existing structure over the suit property. All these prayers would show that the subject matter i.e. the portion under the sale deed admeasuring 89.94 square meters, was taken up before the Civil Court prior in time, thereby in a way admitting the possession of the present applicant over the said area. There appears to be no interim injunction that has been granted against the present applicant by the competent Civil Court. Therefore, when *prima facie* it appears that the applicant possesses 89.94 square meters area under a duly executed sale deed, there is no question of attracting the ingredients of Section 126(2) of the Bharatiya Nyaya Sanhita. The applicant has right to protect his property which he has purchased and even if he has then obstructed the informant to the extent of 89.94 square meters, then he was justified and it will not amount to an offence. In respect of the same, therefore, there ought to

have been further details as to exactly at which place out of the rest of the property, the informant and his cousin brothers were restrained or obstructed from coming inside the premises. When substantial rights are agitated in a civil suit, then invoking the criminal jurisdiction is not justified. Criminal antecedents even if they are there against the applicant will not be a hurdle for exercise of our powers taking into consideration the facts of the case. Therefore, we take this to be a fit case where we should exercise our powers under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023. It would be an abuse of process of law if the applicant is asked to face the further investigation as well as trial, if any. Hence, the following order :-

ORDER

- I) Criminal Application stands allowed.
- II) The FIR vide Crime No.820 of 2024 dated 03.08.2024 registered with Sadar Bazar Police Station, District Jalna for the offences punishable under Sections 126(2), 351(2), 3(5) of Bharatiya Nyaya Sanhita, 2023 stands quashed and set aside as against the present applicant.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm