



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 2674 of 2024

**RAVINDRA KADU PAWAR & ANR. ..PETITIONERS
VS.
THE STATE OF MAHARASHTRA & ANR...RESPONDENTS**

Mr. S. P. Shinde a/w. Mr. R. L. Kamble, Advocate for the
Petitioners.

Mr. R. M. Pethe, APP for Respondent No.1- State.

Mr. Sachin Gite, Advocate for Respondent No.2.

**CORAM : RAVINDRA V. GHUGE &
RAJESH S. PATIL, JJ.**

DATE : 9th JANUARY 2025.

JUDGMENT (PER - RAJESH S.PATIL, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petition is taken up for hearing and disposal.

2. The present Writ Petition has been filed under Articles 226 and 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973, by the original accused No.17 and 18, against whom Crime No. 0089 of 2022 has been registered at Sarkar Wada Police Station, Nashik City, at the behest of Respondent No.2 for the offence punishable under Sections 120-B, 406, 420, 467, 468, 471 read with 34 of the Indian Penal Code.

3. It has been vehemently submitted on behalf of the Petitioners that they have been arrayed as Accused Nos.17 and 18 respectively in the First Information Report (FIR) No. 0089 of 2022 registered with Sarkar Wada Police Station, Nashik City, on 10th May, 2022 along with other Accused persons. It is further submitted that in the FIR, the Complainant, who is Respondent No.2 herein, has alleged that her father late Shri Ashok Bhaguji Bhalerao along with Shri Sunil Bhaguji Bhalerao, Shri Bhagwan Ramchandra Sonawane, Shri Karbhari Ramchandra Sonawane, Shri Tulsiram Ramchandra Sonawane and Accused No.1 (Shri Chandrasekhar Madhavrao Ayachit) were jointly owners of land admeasuring 1H 62R situated in Survey No.702/1-A consisting of Plot No.1 to 30 well within the limits of the Nashik Municipal Corporation, which was purchased for consideration of Rs.5,76,000/- from erstwhile owner Shri Vasant Murlidhar Vise and others under a registered Sale Deed dated 26th August 1994. Accordingly, the names of the parties to the Sale Deed were entered into 7/12 extract vide Mutation Entry No.32658. The purchasers, who were eight in numbers paid a sum of Rs.72,000/- each. Thereafter, all the eight persons decided to develop the said property, therefore, they got the layout plan approved and converted the land into 'NA' and the Colony roads

were prepared after demarcating the plots as per approved layout.

4. Subsequently, the eight purchasers which included the Complainant's father published a "Title Verification" notice in "Dainik Deshdut" on 9th May, 2019 through their Advocate. Accused No.1, Shri Chandrasekhar Madhavrao Ayachit raised an objection to the newspaper notice in respect of the "Title Verification". Due to the objection raised by Accused No.1, the Complainant's late father along with others became aware about the fact that the Accused No.1 claimed to have entered into a Development Agreement in favour of Accused No.1 and also a General Power of Attorney in his favour. Hence, papers to that effect were demanded from Accused No.1, who refused to show any such papers. It is further alleged in the complaint lodged with the FIR that the documents registered by Accused No.1, a watchman and a clerk working with Accused No.1 was made to stand and sign the documents in place of Mr. Tulsiram Ramchandra Sonawane, Bhagwan Sonawane and Dilip Bhalerao So also, in both the documents that is the Development Agreement and the Power of Attorney, the complainant had not put either her signature or thumb impression. The documents are false and fabricated. Therefore, an

offence under Sections 120-B, 406, 420, 467, 468, 471 read with 34 of the Indian Penal Code was attracted.

5. It appears that on an complaint under Section 156 (3) of Code of Criminal Procedure filed by the Complainant, the Court directed the concerned Police Station to conduct detailed investigation of crime. Thereafter, the FIR No.0089 of 2022 was registered. The present Petitioners have been arrayed as Accused Nos.17 and 18 respectively.

6. A bare perusal of the FIR shows that it does not disclose any of the offence as punishable under Sections Sections 120-B, 406, 420, 467, 468, 471 read with 34 of the Indian Penal Code and there was no need to take cognizance of the complaint. In the FIR, there are no allegations levelled against the Petitioners and their names are included with the sole intention to harass the Petitioners. The FIR has been lodged after a long delay of more than three years. The Petitioners have bought Plot No.22, admeasuring 250 sq.mtrs. Which falls in Survey No. 702/1-A/2(21)/22 from one Mr. Narendra Jagannath Bankar through a registered Sale Deed dated 3rd April, 2007 for a consideration of Rs. 10,00,000/-. Before entering into a

registered Sale Deed, the Petitioners had verified and checked all requisite documents from Mr. Narendra Jagannath Bankar. It appeared from the documents that the said Mr. Narendra Jagannath Bankar had purchased the plot from Mr. Chandrashekar Madhavrao Ayachit under the Sale Deed dated 22nd November, 2002 and accordingly, the name of Mr. Narendra Jagannath Bankar was mutated in the records in respect of Survey no.702/1-A/2(21)/22 bearing Mutation Entry No.47761. In the FIR, the name of an erstwhile owner from whom the Petitioners had purchased the plot i.e. Mr. Narendra Jagannath Bankar does not find reference too. The fact narrated in the Complaint and FIR does not discharge any committed offence by the Petitioners. Therefore, this is a fit case where the FIR against the Petitioners should be quashed.

7. *Per contra*, the learned A.P.P. strongly opposed the Petition and submitted that the perusal of the entire FIR and charge-sheet would show that there is ample evidence against the Petitioners to convict them under the offence under Sections 120-B, 406, 420, 467, 468, 471 read with 34 of the Indian Penal Code. It is further submitted that once charge-sheet is filed, this Court should not entertain the present Writ Petition.

8. The learned Advocate appearing for the Complainant/Respondent No.2 vehemently opposed this Writ Petition. The learned Advocate submitted that the Petitioners have already filed a Civil Suit at Nashik in which, interim orders have passed against the Petitioners, directing them not to deal with the subject property. He submitted that mere pendency of civil suit doesn't make out a ground for quashing of criminal proceedings. He further submitted that the Petitioners should be directed to face trial and the present Writ Petition which is devoid of merits and the same may be dismissed with costs.

9. We have heard learned Advocates appearing for the parties and the learned APP.

10. It is a matter of record that the FIR does not find the name of Mr. Narendra Jagannath Bankar from whom the Petitioners had purchased the subject plot No.22, by a registered Sale Deed dated 3rd April, 2007. The said Mr. Narendra Jagannath Bankar had purchased the subject plot from Mr. Chandrasekhar Madhavrao Ayachit by a Sale Deed dated 22nd November, 2002. A Mutation Entry to that effect was recorded. The Petitioners have purchased

the plot in the year 2007 and the name of an erstwhile owner from whom the Petitioners purchased the plot that is Mr. Narendra Jagannath Bankar is not finding place in the FIR. The FIR is lodged based on the Criminal Application No.1248 of 2021 filed by the Complainant before the Additional Chief Judicial Magistrate, Nashik.

11. In the complaint, on the basis of which the F.I.R has been lodged, in tabular form there is mention about the Accused number, area of the plot, the name of the accused who has purchased the plot. The name of Mahavir Bhavrilal Chopda is mentioned as Accused No.16 against whom Plot No.21 admeasuring 250.25 sq. mtrs. Accused No.17 the name of Ravindra Kadu Pawar and Accused No.18 Ajay Rajaram Pawar (who are the Petitioners in the present Petition) have been shown, and plot No.22 admeasuring 250.25 sq mtrs have been shown against their name. However, further paragraph No.F shows that Accused No.16-Mahavir Bhavarilal Chopra in connivance with Accused No.1-Chandrashekhar Ayachit based on fraudulent power of attorney, Plot No.22 (subject plot) has been shows as sold. It further states that without any consideration being paid to the Complainant's father or

to any of the 7 persons the land is shown as sold. Therefore, the Complaint at two different places with regard to Plot No.22 gives reference of two different persons, at one place name of the petitioners have been shown, while at the other place the name of Accused No.16-Mahavir Bhavarilal Chopra has been shown.

12. The FIR has been registered under Section 120-B, 420, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860, as against the Accused persons, including the Petitioners, who are arrayed as Accused Nos. 17 and 18.

13. Section 120-B-cheating and dishonestly inducing someone to deliver property.

In the present proceedings, the Complainant herself as referred to two different persons as Accused. The FIR states that the subject Plot No.22 being sold fraudulently by Accused No.1. It is a matter of record that the present Petitioners, who are arrayed as Accused Nos. 17 and 18, purchased the subject plot No.22 from one Mr. Narendra Jagannath Bankar by way of registered sale dated 3rd April, 2007. The said Bankar is not arrayed as an Accused in the present proceedings. He had purchased the subject Plot No.22 from

Accused No.1 by sale deed dated 22nd November, 2022. Hence, the ingredients of Section 420 are not attracted.

14. Section 406-punishment for criminal breach of trust.

In the present proceedings, the present Petitioners, who are arrayed as Accused Nos. 17 and 18 in the F.I.R have not deal with the property through the Accused No.1. They purchased the property based on a search report provided by an Advocate and executed a registered sale deed dated 3rd April, 2007. Therefore, according to us, the ingredients of Section 406 are not attracted.

15. Section 467-forgery of valuable securities, will, and other documents.

In the present proceedings, the ingredients of Section 467 are not attracted. The present Petitioners had purchased the property by registered sale deed in the year 2007 from Narendra Bankar, based on a title search report of a lawyer.

16. Section 468-forgery for the purpose of cheating.

In the present proceedings, the ingredients of Section 468 are not attracted. For the reasons that the Petitioners had purchased the

subject Plot No.22 by a registered sale deed dated 3rd April, 2007 and had taken due care and precaution, by obtaining a title search report, which is annexed as page Nos.76 to 80 of the present Petition. Hence, the ingredients of Section 468 are not attracted.

17. Section 471- using a forged document or electronic record.

The Complainant's allegation regarding the forging of documents is mainly against Accused No.1. According to the Complainant, Accused No.1 forged documents, and as per paragraph No.F, the subject Plot No.22 was sold to Mr. Mahavir Chopda (Accused No.16). However, in the earlier part of the complaint, the said Plot No.22 has been shown as sold to the present Petitioners, who are arrayed Accused No.17 and 18. This itself shows that the Complainant was not sure that the subject Plot No.22 was sold by Accused No.1 to which of the Accused. However, it is brought on record by the Petitioners that the Petitioners had not purchased the subject Plot No.22 from Accused No.1. They had purchased the subject Plot No.22 from Accused No.16 Mr. Narendra Bankar by a registered sale deed dated 3rd April, 2007. The said Narendra Bankar has not been arrayed as an Accused in the present FIR Hence, the

ingredients of Section 471 are not attracted.

18. Section 120-B- the punishment for criminal conspiracy.

To attract Section 120-B, there must be relevant allegations regarding the role of the Petitioners, who are arrayed as an Accused No.17 and 18. The fact that the complaint is based allegations at one place that Accused No.1 sold the subject Plot No.22 to the Petitioners, and at another place, to Accused No.16. Hence The ingredients of Section 120-B are not attracted against the present Petitioners, who are shown as Accused Nos. 17 and 18. However, the fact remains that Petitioners have never purchased the subject plot No.22 from Accused No.1.

19. Section 34- Acts done by several persons in furtherance of common intention.

Even the ingredients Section 34 are not attracted as against the Petitioners, as they can at the most be called bonafide purchaser for value without notice.

20. The fact narrated in the complaint and the FIR, in our view, doesn't *prima facie* disclose the commission of an offence by

the Petitioners. The allegations against the Petitioner are insignificant, on the basis of which no prudent person could reach to a conclusion that there are sufficient grounds to proceed against the Petitioners/Accused Nos. 17 and 18.

21. We find that there is no merits in the FIR lodged as against the Petitioners and the charge-sheet filed to that effect as far as the Petitioners/Accused Nos.17 and 18 are concerned for the offence punishable under Sections 120-B, 406, 420, 467, 468, 471 read with 34 of the Indian Penal Code are concerned, hence, **the present Writ Petition is allowed** in terms of prayer Clauses (a) and (b) of the Writ Petition, which read as under (reproduced verbatim) :-

(a) This Hon'ble High Court may kindly be pleased to issue appropriate writ in the nature of writ of certiorari or any other appropriate writ or order in the nature of writ of certiorari thereby quashing and setting aside the FIR No.89 of 2022 registered u/s. 120-B, 506, 420, 467, 468, 471 r/w. 34 of the Indian Penal Code, 1860 of I.P.C. with Respondent No.1, Sakinaka Police Station, Nashik at the instance of the Respondent No.2.

(b) This Hon'ble High Court may kindly be pleased to issue appropriate writ in the nature of writ of certiorari or any other appropriate writ or order in the nature of writ of certiorari thereby quashing and setting aside the Order dated 26/04/2022 passed by the Additional Chief Judicial, Magistrate in Complaint filed under section 156(3) of Cr.P.C.

22. Our findings noted above are only on the basis of the FIR and we have not dealt with the merits of the Civil Suit. The said Civil Suit filed by the Complainant to be decided without being influenced by the findings recorded by us in the present order.

(RAJESH S. PATIL, J.)

(RAVINDRA V. GHUGE, J.)