



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 14 OF 2021

Khemdeo S/o Kisanrao Garpalliwar And Another
Vs.

State of Maharashtra, Thr. P.S.O., Police Station – Gondpipri, District Chandrapur And
Another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Shraddhanand Bhutada, Advocate for the applicants
Mr. A. A. Dhawas, Advocate for the non-applicant no. 2
Mr. M. J. Khan, APP for non-applicant/State

**CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.**

DATED : 22.12.2025

1. Present application is preferred by the applicant under Section 482 of the Code of Criminal Procedure, 1973, for quashing of the First Information Report, in connection with Crime No. 161/2020, registered under Section 420 read with Section 34 of Indian Penal Code, 1860, and the consequent proceeding arising out of the same, bearing Charge Sheet No. 45/2025.

2. During submissions, learned counsel for the applicants not press the application for applicant no. 1. The First Information Report came to be lodged by the non-applicant no. 2, alleging that the applicant no. 1 has shown him a property to purchase the same, and thereby he entered into an agreement to purchase plot no. 25, for the

consideration of Rs. 3,00,000/- (Three lack Rupees). Accordingly, he paid the amount, but subsequently he came to know that the property which was sold to him is not the same property which was shown to him, and it is from different survey number, owned by one Annapurna Vishwanath Madavi, and thereby he is cheated by the present applicants.

3. Heard learned counsel for the applicant, who submitted that applicant no. 1 has purchased property consisting of various plots carved out of survey no. 136, Gondpipri, from Sunil Madavi and Annapurna Madavi. Applicant no. 1 and non-applicant no. 2 entered into a registered agreement of sale with respect and accordingly the sale deed was executed. He submitted that the property which received through the sale deed, the same property was sold out by him. He submitted that as far as the applicant no. 2 is concerned, except her presence along with the applicant no. 1, there is no allegation that she any way concerned with the said transaction. Being a wife of the applicant no. 1, she was present at the time of execution of the sale deed along with applicant no. 1. This fact itself is not sufficient to show that she was also having intention since inception to cheat the non-applicant no. 2. She has signed as a witness to the said sale deed, except that role no role is attributed to her. The various statements are recorded during the investigation, the said statements also nowhere discloses any other role to the applicant no. 2. Thus,

considering no prima facie case is made out against the applicant no. 2. The First Information Report and the consequent proceeding against her be quashed.

4. Per contra, learned APP and the learned counsel for the complainant strongly opposed for the same, and submitted that the recitals of the First Information Report and the statements of the witnesses shows that the applicant no. 2 was also aware about the intention of the applicant no. 1, she shared the common intention with the applicant no. 1, and therefore, prima facie case is there against the applicant no. 2 also, and therefore, the application deserves to be rejected.

5. On hearing both the sides, and on perusal of the recitals of the First Information Report, it reveals that the agreement was between the applicant no. 1 and the non-applicant no. 2, as to the purchase of the said property. It is nowhere contention of the non-applicant no. 2 that the applicant no. 2 was also present when the property was shown to him. His contention that under the misrepresentation another property was sold to him is also accepted by the Civil Court in Spl. Civil Suit No. 89 of 2020, wherein also no order passed against the applicant no. 2, and suit is dismissed against her. Considering the nature of the evidence against the applicant no. 2, except her presence admittedly, no other material connected during the investigation to show that she was sharing a common

intention along with the applicant no. 1. Being wife, her presence along with the applicant no. 1 was natural one, and that itself is not sufficient to infer that she was also sharing the common intention with the applicant no. 1.

6. In view of the principles laid by the Hon'ble Apex Court in the case of **State of Haryana & Others vs. Ch. Bhajan Lal & Others** reported in 1992 Supp. (1) SCC 335, which is reproduced below :-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on

the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

7. The applicant no. 2 has made out a case for quashing of the First Information Report. In view of that, the application deserves to be allowed. Accordingly, we proceed to pass the following order :-

ORDER

- i) Application is allowed.
- ii) The First Information Report in connection with Crime No. 161/2020 registered under Section 420 read with Section 34 of Indian Penal Code 1860 and the consequent proceeding arising out of the same bearing Charge Sheet No. 45/2025 pending in the Court of Judicial Magistrate First Clas, Gondpipri is hereby quashed and set aside to the

extent of the applicant no. 2 – Sharda W/o Khemdeo Garpalliwar.

iii) The prayer of the applicant no. 1 is disposed of as the application is not pressed for him.

iv) The application is disposed of.

(NANDESH S. DESHPANDE, J.) (URMILA JOSHI-PHALKE, J.)