IN THE HIGH Court OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 710 OF 2023

1. Harish Ramchandra Zawar
2. Pooja Harish Zawar ...Applicants

VERSUS

1. The State of Maharashtra
2. Dinesh Ramchandra @ Rameshchandra Tiwari ...Respondents

...

Mr. J. V. Patil, Advocate for Applicants
Mr. A. R. Kale, APP for Respondent-State

CORAM : R.M. JOSHI, J
DATE : OCTOBER 01, 2026

P. C. :

1. At the outset, it needs to be recorded that by order dated 23.04.2026, the appearance of Advocate for Respondent No. 2 is discharged and since then neither any other Advocate has caused appearance for Respondent No. 2 nor Respondent No. 2/Informant has appeared. The matter is therefore, heard finally on merits in the absence of Informant.

2. The present Application is filed seeking quashment of FIR No. 0339 of 2021 dated 24.07.2021, registered with Zillapeth Police Station, Dist. Jalgaon, for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860 (for short "IPC") so also, charge-sheet bearing No. 105 of 2022, dated 15.11.2022 and order taking cognizance and issuing process passed by the trial Court in R.C.C. No. 947 of 2022.

3. The case of the prosecution is that the Informant agreed to purchase Flat No. 101 in Vasukamal Nandanvan Apartment from the accused, Harish Ramchandra Zawar and Puja Harish Zawar. Based on the initial representation that the property was free from all encumbrances, the Informant paid an initial amount and subsequently transferred a total of ₹41,19,000/- through cash, cheques, and UPI transfers between October and November, 2019. However, the accused kept evading the execution of the sale deed. The Informant later discovered that the flat was mortgaged with the State Bank of India. Despite disputes over the total consideration and a subsequent mediated agreement on 05.01.2021 where the Informant agreed to pay an extra amount of ₹4,00,000/- to clear the bank loan, the accused failed to execute the sale deed, clear the bank encumbrance, or refund the paid money, showing that the accused lied to the Informant and further had intention to cheat the Informant for their financial gain. Therefore, the present FIR under Section 420 read with Section 34 of the IPC came to be registered. After completion of investigation, charge-sheet came to be filed and later, order taking cognizance and issuing process came to be passed by the trial Court.

4. Learned Counsel for the Applicants submits that this is a civil dispute and criminal colour is sought to be given to the same. According to him, the allegations made in the FIR are incorrect to the extent of

suppression of the fact much less about the fact of obtainment of loan in respect of property in question. He drew attention of this Court to the notice dated 08.09.2020 wherein, on behalf of the Applicants, their Advocate has disclosed the fact of there being loan on the property and the same was reflected on the property card. He also takes exception to the document i.e. agreement to sell allegedly executed by Applicants in favour of Informant dated 05.01.2021. According to him, this is a fabricated document and, in this regard, complaint has already been lodged by the Applicants. Lastly, he submits that there is huge delay in lodging of FIR and it is registered only on a suspicion since there is nothing in the FIR to show that there was dishonest intention since the inception to attract the offence under Section 420 of IPC.

5. To support these contentions, learned Counsel for the Applicants relied on following judgements :-

(i) The Commissioner of Police and Ors. Vs. Devender Anand and Ors. (MANU/SC/1058/2019),

(ii) Kunti and Ors. Vs. State of Uttar Pradesh and Ors. (MANU/SC/0534/2023) and;

(iii) Usha Chakraborty and Ors. Vs. State of West Bengal and Ors. (MANU/SC/0079/2023).

6. Learned APP strongly opposed the grant of any relief to the Applicants by submitting that the offence is of serious nature and the Applicants have

defrauded the Informant. He submits that the Applicants since the very beginning did not have any intention to execute the agreement to sell, otherwise they would have executed the same long ago and therefore, there is an intention to defraud since the inception of the transaction. He submits that the disputes between Informant and Applicants, relating to the consideration amount and encumbrances on the property were under mediation and hence, there is a delay in filing of FIR. It is only after the Informant paying the extra amount of Rs. 4 lakhs as consideration to clear the bank loan as per the mediated agreement, when the Applicants failed to execute the agreement to sell, suspicion of the Informant was confirmed about the intention of the Applicants to cheat the Informant and hence, leading to lodging of the FIR.

7. Though learned Counsel for the Applicants claims that there was never any suppression of fact and Informant had knowledge of the encumbrances on the property, however, this contention does not deserve acceptance for the reason that Respondents have refuted the said contention and reiterated that it was never disclosed to them, and thus contention gets support from their reply dated 19.09.2020 to the notice of the Applicant at Page No. 128. Furthermore, learned Counsel for the Applicants placed reliance on the judgement of Hon'ble Supreme Court in case of ***Devender Anand*** *(supra)* wherein, in Paragraph 4.2, it is observed that, complainant

himself had paid mortgage money and got mortgage redeemed, thereafter, executed the sale deed in his name and therefore, the contention of the complainant was not accepted, however, the facts of the present case are materially different owing to the fact that here, the sale deed is neither executed nor the mortgage money is paid by the Informant, whatever amount paid by the Informant after the mediation was in the form of the enhanced consideration to clear the loan.

8. It is settled position of law that only in case the entire material on record is accepted to be correct, no offence is made out, the proceedings can be quashed as held in the judgement of ***State of Haryana and Ors. Vs. Bhajan Lal and Ors. (1992) Supp (1) SCC 335.*** In the present case, agreement to sell dated 05.01.2021 is placed on record, showing that there was valid agreement between the Informant and Applicants. The learned Counsel for the Applicants argued that this agreement to sell is fabricated and was never executed, however, it is not open for this Court while exercising its extraordinary jurisdiction under Section 482 of Code of Criminal Procedure, to decide the correctness/genuineness or otherwise of the documents placed on record or the statements of witnesses so also of the Informant. Suffice it to say that *prima facie* consideration of material on record is sufficient to make accused to undergo trial and it would be for the trial Court to decide the contentions of parties on merit. Thus, this is not a

case wherein this Court is expected to exercise extraordinary powers to quash FIR and proceedings arising out of the same.

9. In view of the above, the Application stands dismissed.

(R. M. JOSHI, J.)

Malani