

Bombay High Court

Rahul Anandrao Malve And 4 Others vs State Of Mah. Thr. Pso Wathoda ... on 17 December, 2020

Bench: V.M. Deshpande, Anil S. Kilor

apl-770-20(j).odt

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 770 OF 2020

1. Rahul Anandrao Malve,
Aged 42 Years, Occ. Agriculturist,
R/o Gondbori, Tah. Bhiwapur, Dist. Nagpur

2. Milind Anandrao Malve,
Aged 47 Years, Occ. Agriculturist,
R/o R-55, Reshimbag, Nagpur

3. Madhukar Mahadeo Pardhi,
Aged 62 Years, Occ. Retd.
R/o Khat Road, Bhandara.

4. Anil Kisanji Mulewar,
Aged 54 Years, Occ. Service
R/o C/o Nasir Qureshi Kathiyaward,
Samruddhi Nagar, Bhandara,
Tah. & Dist. Bhandara

5. Md. Badrul Nisaruddin Ansari,
Aged 45 Years, Occ. Private,
R/o 20, Deshpande Layout, Nagpur

.... APPLICANTS

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Wathoda, Nagpur

2. Sarika Vasantao Nagpure,
Aged about 38 years, Occ. Housewife,
R/o Chikhali Road, Fetri,
Tah. & Dist. Nagpur

....NON-APPLICANTS

Shri Prashant Gode, Advocate for the applicants.

Shri M.J.Khan, Additional Public Prosecutor for the non-applicant no.1.

Shri S.M. Bahirwan, Advocate for the non-applicant no.2.

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CORAM : V. M. DESHPANDE AND
ANIL S. KILOR, JJ.

DATE : 17th DECEMBER, 2020.

ORAL JUDGMENT: [PER: ANIL S. KILOR, J.] Rule. Rule made returnable forthwith. The matter is heard finally with the consent of the learned counsel for the parties.

2. By way of this present application under [Section 482](#) of the Code of Criminal Procedure, the applicants are praying for quashing and setting aside the First Information Report vide Crime No. 337 of 2020 dated 23rd October, 2020, registered with Police Station, Wathoda, Dist. Nagpur, on a complaint lodged by the non- applicant no.2 against the applicants for the offences punishable under [Sections 420, 465, 470, 471](#) read with [Section 34](#) of Indian Penal Code.

3. It is the case of the prosecution that on 23 rd October, 2020, the non-applicant no.2 lodged a criminal report against the applicants stating therein that she is the daughter of late Vinodhibai, after whose death she is the only legal surviving heir of Vinodhibai who during her life time purchased a plot no.13, admeasuring 1975 sq.ft. Mouza Dighori, within the jurisdiction of Nagpur. It is alleged apl-770-20(j).odt that she had applied for mutation after the death of her mother and her name was mutated on the N.M.C. record. However, on 7 th

February, 2019, when she went alongwith her husband to the said plot, the applicant no.5 threatened her and claimed to be the owner of the said plot. Thereupon, it was revealed by her that by fabricating the documents and creating a false power of attorney, accused persons tried to grab the said property of the complainant. Therefore, she immediately lodged a report, whereupon the crime in question was registered.

4. We have heard Shri Prashant Gode, learned counsel for the applicants, Shri M.J.Khan, learned Additional Public Prosecutor for the non-applicant no.1 and Shri S.M. Bahirwan, learned counsel for the non-applicant no.2.

5. Shri Gode, learned counsel for the applicants points out that the matter has been compromised and settled between the parties and a Compromise Deed was also prepared and submitted before the Civil Judge, Senior Division, Nagpur in Regular Civil Suit No. 1202 of 2019, which was filed by the complainant against the applicants for declaration, cancellation of power of attorney, possession letters, permanent injunction and damages.

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6. He further points out that as per the said compromise the complainant is in possession of the said plot and accordingly the learned trial Court has recorded the compromise and disposed of the said Regular Civil Suit No. 1202 of 2019 vide order below Exh.1 dated 25th November, 2020. He therefore submits that in view of the compromise arrived between the parties, this Court may quash and set aside the First Information Report in question.

7. Shri S.M.Bahirwan, learned counsel for the non- applicant no.2 points out the affidavit filed on behalf of non- applicant no.2 wherein the non-applicant no.2 has stated that she does not have objection for quashing the First Information Report in question.

8. Shri M.J.Khan, learned Additional Public Prosecutor opposed the present application and prays for dismissal of the same.

9. We have given our conscious thought to the facts and circumstances of the present case and also perused the relevant documents available on record.

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10. It is revealed from the record that on the basis of alleged fabricated power of attorney and possession letters, the applicants tried to grab the plot owned by the complainant and therefore she lodged a criminal report and also filed the aforesaid civil suit. During the pendency of the said suit, the accused persons and the complainant compromised the dispute

and recorded their compromised vide document captioned as "Compromised Deed" and submitted the same in the aforesaid civil suit before the trial Court.

11. The relevant clauses of the said Compromised Deed dated 24th November, 2020 read thus:

1) The plaintiff has filed the Civil Suit before this Hon'ble Court for declaration and cancellation of Power of Attorney, possession and permanent injunction. The instant Civil Suit is pertaining to Plot No.13, admeasuring 1975 sq.ft. Situated in Mouza Dighori, Mouza No.193, P.H.34-A, Khasara No. 18/4 City Survey No.59, Sheet No.651/20.

2) The said Civil Suit was filed by the Plaintiff on the basis of one registered sale deed dated 16/12/1988.

3) The instant dispute has been cropped up because of one Power of Attorney dated 24/02/2005. Thereafter subsequent transaction with regard to the said property is being shown by the Defendant no.2, 3 and 4 are not binding upon plaintiff.

Defendant no.2 on the strength of Power of Attorney executed agreement of sale and possession letter in favour of Defendant nos. 3 and 4. Said Defendant nos. 3 and 4 thereafter executed agreement for sale and apl-770-20(j).odt possession letter in favour of Defendant no.1. The Defendant no.5 and 6 are formal party. They had been made party in the suit being witnesses of the said agreement. It is further admitted fact that the defendant no.5 and 6 need not to be party to this compromise. The plaintiff has questioned the said agreement and Power of Attorney. The plaintiff has also prayed for declaration that, she is the absolute owner of the property in question.

4) The parties to the suit have now settled down the dispute amicably. Plaintiff and Defendant No.2 are relatives and therefore, they have to settle down the matter once for all.

5) It is also pertinent to point out that, the plaintiff has lodged the police complaint against the defendant no.1 to 5 under [Sections 420, 465, 470, 471](#) and [34](#) of I.P.C. On the basis of the complaint lodged by the Plaintiff, Police Station, Wathoda has registered the FIR bearing FIR No. 0337. The said FIR came to be registered on 23 rd October, 2020.

6) After due negotiation between the parties; the parties have come to the compromise on following terms and conditions.

a) It is acceptable to the Defendants that, the Plaintiff is the owner of the property in question being only serving legal heir of Smt. Vinodini Bhayyaji Yeole/original owner of property.

b) The defendants further accept that the plaintiff is in physical possession of suit property and further agree that they will not disturb the peaceful possession of plaintiff over the suit property in future.

e) Parties further agree that, the Defendants may approach before Hon'ble High Court for quashing of FIR bearing No. 0337 dated 23/10/2020 registered by the Police Station, Wathoda. On filing of such proceeding before Hon'ble High Court; the Plaintiff will give no objection for quashing of the FIR and apl-770-20(j).odt she has no grievance for quashing of FIR bearing No.0337 dated 23/10/2020 registered against the Defendants. The Plaintiff and Defendants to this compromise pursis withdraw all allegations and counter allegations leveled against each other and the parties have no grievance against each other.

f) The Defendants further agree that, the Power of Attorney dated 24/02/2005, Agreement dated 26/12/2006 executed by Defendant no.2, agreement dated 16/10/2020 executed by Defendant No.3 and 4 stand cancelled. Similarly, possession letters, if any, given by the Defendants also stand cancelled. The defendant no.1 to 5 shall hand over all original documents to the plaintiff in respect of property in question.

g) The defendants further agree that they will not question or raise any objection about title and possession of the plaintiff before any court of law in future.

12. The learned trial Court after recording the said compromise, disposed of the aforesaid Regular Civil Suit No. 1202 of 2019.

13. Today, the non-applicant no.2 is personally present in the Court who has acknowledged the fact of the compromise and the terms and conditions stated therein. She has informed to this Court that she is in possession of the plot in question and she has no subsisting grievance in view of the terms and conditions of the compromise deed.

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13. In that view the matter, as the matter has already been settled and the complainant/non-applicant no.2 does not want to proceed further with the criminal complaint filed against the applicants, it would be a futile exercise to compel the applicants to face the trial. Thus, we consider the present case as a fit case to exercise jurisdiction under [Section 482](#) of the Code of Criminal Procedure. Accordingly, we pass the following order.

ORDER i. The Criminal Application No. 770 of 2020 is allowed. ii. The First Information Report No. 337 of 2020 dated 23rd October, 2020 registered with Police Station Wathoda, Dist. Nagpur, for the offences punishable under [Sections 420, 465, 470, 471](#) read with [Section 34](#) of Indian Penal Code qua the applicants, is hereby quashed and set aside.

iii. The Criminal Application No. 770 of 2020 is disposed of. No order as to costs.

JUDGE

JUDGE

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