

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4614 OF 2012

1. Ravindra Babulal Jain,
Age 45 yrs., Occ. Business,
Vardhaman Residency, Ulkanagari,
Aurangabad.
2. Ashish Tejmal Mugdiya,
Age 36 yrs., Occ: Business,
r/o. N-3, CIDCO, Aurangabad.

...PETITIONERS

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya, Mumbai 32
2. The Dy.Superintendent of Police,
Anti Corruption Bureau, Aurangabad,
Tq. & Dist. Aurangabad.

...RESPONDENTS

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Mr. R.R.Mantri, Advocate for the applicants.
Mrs. A.V.Gondhalekar, APP for respondent State.

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CORAM: R.M.BORDE

AND

P.R.BORA, JJ.

**Date of reserving
the judgment:September 8th, 2015
Date of pronouncing
the judgment:October 1st, 2015.**

JUDGMENT (Per P.R.Bora, J.):

1. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for the parties.

The applicants have filed the present application for quashment of the FIR lodged against them and Crime

No.I-141/2012 registered against them on the basis of the said FIR at City Chowk Police Station, Aurangabad, for the offenses punishable under Sections 119, 167, 418, 468, 471 read with Section 34 of the Indian Penal Code, Section 13(1)(d) read with Section (2) of Prevention of Corruption Act and Sections 59 and 62 of the Bombay Stamps Act, 1958.

2. On 30.8.2012, Shri Bramhadeo Vasudeo Gawade, the then Deputy Superintendent of Police, Anti Corruption Bureau, Aurangabad, filed written report against the present applicants at City Chowk Police Station, Aurangabad, alleging that the present applicants, in connivance with Shri V.M.Made, the then in-charge Sub Registrar-II, Aurangabad, and Mrs. Kavita Pradip Kadam, the then Junior Clerk working in the office of Sub Registrar-II, Aurangabad, got registered the sale deed No.4228 in respect of land admeasuring 8 acres 4 gunthas out of Gat No.72 situate at Mouje Satara, taluka and district Aurangabad, showing market value of the said property as Rs.3500/- per square meter when the market value of the said property at the relevant time was Rs.4100/- per square meter and thus caused revenue loss to the tune of Rs.12,76,000/- to the Government. It was also alleged that the applicant completed the aforesaid transaction by preparing false documents, false record and fraudulently and dishonestly used the said record as genuine one. On the basis of the report so lodged by Shri Gawade, the offence was registered against the present

applicants and two others, namely, Shri Made and Sau.Kavita Kadam on 30.8.2012 for the offenses punishable under Sections 119, 167, 418, 468, 471 read with Section 34 of the Indian Penal Code, Section 13(1)(d) read with Section 13 (2) of Prevention of Corruption Act and Sections 59 and 62 of the Bombay Stamps Act, 1958, and the investigation was set in motion. The applicants were arrested on the same day. The record shows that police custody of the applicants / accused was obtained upto 3rd November, 2012, and thereafter, on 3rd November, 2012 itself, both the applicants were released on bail.

3. The prosecution case, as is revealing from the contents of the FIR, is that the applicants purchased the land Gat No.72 admeasuring 8 acres, 4 gunthas for consideration of Rs. three crores, sixty lacs. The sale deed in that regard was presented for registration on 2nd of December, 2008 before the Sub Registrar-II, Aurangabad. While presenting the deed of sale for its registration, the applicants i.e. the purchasers of the subject land did not disclose the true market value of the aforesaid land which, according to the prosecution, was Rs.4100/- per square meter as per the Ready Reckoner rates declared by the Government in the year 2008. It is alleged that the applicants showed the market value of the said property as Rs.3500/- per square meter which was the Ready Reckoner rate of the earlier year i.e. of 2007. According to the prosecution, as per Ready

Reckoner rates of the year 2008, the market value of the subject property was Rs.seven crores, five lacs, twenty thousand and the stamp duty payable on the same was Rs.thirty five lacs, twenty six thousand. The present applicants, as alleged by the prosecution, declared the market value of the subject property to the tune of Rs. four crores, fifty lacs on the strength of the Ready reckoner rates of 2007 and paid the stamp duty to the tune of Rs.22,50,000/- only. According to the prosecution, the applicants thus paid less stamp duty to the extent of Rs.12,76,000/- and caused loss to the Government revenue to that extent.It is also the case of the prosecution that while registering the subject instrument, the present applicants used false and forged documents as genuine one and conniving with the then in charge Assistant Sub Registrar, namely, Shri Made and the then Junior Clerk in the Office of the Sub Registrar-II, Aurangabad, namely, Sau. Kavita Kadam, cheated the Government by causing loss of Rs.12,76,000/- to the Government.

4. Prosecution case also reveals that Shri K.N.Tandale and two others have made complaint alleging that the racket was in existence in the office of the Sub Registrar which was helping the private builders to evade the stamp duty. On the basis of the said complaint, it is the contention of the prosecution that the transaction entered into by the present applicants pertaining to the sale deed executed and registered on 2nd December,

2008, at Sr.No. 4228 of 2008, was also examined and the same was found objectionable.

5. Shri R.R.Mantri, learned counsel for the petitioners, vehemently argued that initiation of the alleged criminal prosecution against the applicants was a vindictive action at the instance of the persons who were interested in the subject land. Learned Counsel further submitted that though the entire transaction was clean, transparent and in accordance with the provisions of law, on some false pretext and with colourable exercise of the powers, a total false case came to be registered against the applicants. Learned Counsel further submitted that the subject property was purchased by the applicants in a public auction for consideration of Rs. 3,00,60,000/- (Rs. three Crores, sixty lacs), however, the market value of the said property was shown to be Rs.4,50,00,000/- and, accordingly, stamp duty of Rs.22,50,000/- (Rs. twenty two lacs, fifty thousand) was paid by the applicants. Learned Counsel further submitted that since the then in-charge Sub Registrar was satisfied with the market value, as was shown by the applicants, he accepted the document for registration and registered the same. Learned Counsel further submitted that the allegations against the applicants that they prepared false and forged document, and used them to be genuine one, is absolutely false and unfounded. Learned Counsel further submitted that the FIR, even if read as it is, and accepted to be true, no offence can be said to have been made out against the

present applicants. Learned Counsel further submitted that in view of the specific provisions of the Bombay Stamp Act pertaining to evasion of stamp duty and providing punishment for the same, general provisions of the Indian Penal Code cannot be pressed into service. Learned Counsel further argued from the facts that the FIR was registered at wee hours i.e. at 6 a.m. on 30th August, 2012, and the arrests of the present applicants were made in the early morning and even before registration of the FIR, it is writ large that the entire action was with mala fide intention. Learned Counsel submitted that initiation of the criminal prosecution against the applicants is abuse of process of the Court and he, therefore, prayed for quashment of the FIR and the crime registered against the applicants on the basis of the said FIR. Learned Counsel added that some of the offenses alleged against the applicants under the Indian Penal Code, can be invoked only against the Government servants and not against the private individuals. Learned Counsel further submitted that Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act also cannot be invoked against the present applicants.

6. Mrs. A.V.Gondhalekar, learned Assistant Public Prosecutor, opposed the submissions advanced on behalf of the applicants. Learned A.P.P. strongly supported the criminal prosecution initiated against the present applicants. Learned A.P.P. submitted that showing the market value of the property in question, according to the

Ready Reckoner rates prevailing in the year 2007, though the sale deed was presented for registration on 2nd of December, 2008, was with the only intention of cheating the Government and causing revenue loss to the Government. Learned A.P.P. further submitted that non mentioning of zone number within which the subject property falls, also clearly indicates the ill intention of the applicants. Learned A.P.P. further submitted that even in the past, the applicants had adopted the same modus operandi and had caused revenue loss to the Government in lacs of rupees. Learned A.P.P. submitted that the offensea alleged against the applicants are prima facie made out through the contents of FIR. Learned A.P.P. therefore prayed that in such circumstances, this Court shall refrain from exercising its powers under Section 482 of the Code of Criminal Procedure.

7. We have carefully considered the submissions advanced by the learned Counsel for the applicants as well as on behalf of learned A.P.P. We have perused the FIR, the written submissions filed on behalf of the State and the documents filed on record by the applicants as well as by the State. On the basis of the FIR lodged by Shri Bramhadeo V. Gawade on 30.8.2012, a crime has been registered against the applicants for the offenses punishable under Sections 59 and 62 of the Bombay Stamp Act, 1958, Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, and Sections 119, 167, 418, 468, 471 and 34 of the Indian

Penal Code. The offenses under Sections 119 and 167 of the Indian Penal Code; so also the offenses under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, are attracted only against the public servants. As such, now it will have to be seen whether, on the basis of the FIR lodged against the applicants and the material placed on record by the prosecution in support thereof, any case under Sections 418, 471, 468 and 34 of the Indian Penal Code can be said to be made out.

8. Considering the contents of the FIR and the material on record, it is apparent that Section 418 of the Indian Penal Code may not apply to the present case. This Section talks of cheating with knowledge that wrongful loss may ensue to the person whose interest the offender is bound to protect. No such case is made out in the FIR or through the other material on record.

9. The offences of (i) forgery for the purpose of cheating (Section 468) and (ii) using as genuine a forged document (Section 471) are alleged to have been committed by the applicants sharing common intention (Section 34) with the other two accused namely; Shri Made, the then Assistant Sub Registrar and Sau Kavita Kadam, the then Junior Clerk working in the office of Sub Registrar-2, Aurangabad, on the following grounds.

(I) The applicants submitted the in-input form which was not correctly filled.

- (II) The applicants intentionally did not mention the zone number within which the subject property is situated.
- (III) The ready recknoer rate and zone number are not mentioned at the top of the document of sale deed.
- (IV) The market value of the subject property is deliberately shown less.
- (V) The market value of the property is fraudulently assessed as per the ready recknoer rates prevailing in the year 2007 i.e. Rs.3,500/- per Sq. Mtr. When the same ought to have been assessed at the ready recknoer rates of the year 2008 i.e. Rs.4,100/- per Sq. Mtr., with a view to confer pecuniary advantage to the applicants which resulted in causing wrongful loss to the Government to the tune of Rs.12,76,000/-.
- (VI) The applicants and the other two accused had common intention to cheat the Government.

10. After having considered the aforementioned grounds in light of the pleadings and documents placed on record, it does not appear to us that any offence under Indian Penal Code, as alleged, would be attracted against the applicants. Even if it is assumed that, the in-put form is not correctly filled, that zone number is not mentioned and that incorrect market value is mentioned of the subject property, even then no offence can said to be

made out by the applicants of using false document or of forgery.

11. To attract an offence under section 468 of Indian Penal Code, the following are the requirements.

- (i) That, the document in question is a forgery;
- (ii) That, the accused forged it;
- (iii) That, in forging it he intend that it shall be used for the purpose of cheating.

12. The assertion of a false claim in a document does not constitute the document a false one. Mere inclusion of certain false recitals or particulars though may amount to making a false statement, does not amount to forgery. The mere fact that a document contains some false recitals or untrue statement would not make it a false document. A suit plaint or a written statement may contain certain averments which may be untrue, but such untrue statements in pleading or application would not be sufficient to make them forged documents. Similarly, the affidavit though supposed to contain only true statements may contain untrue statements. The deponent in such cases may perhaps be liable for other offences, but not the offence of forgery. Having regard to the definition of a false document under section 464 of Indian Penal Code, a document can be said to be forged only if it purports to be signed or sealed by a person who in fact never signed or sealed it.

13. In view of the above, we have no doubt in our mind that, even if the allegations made in the F.I.R. are accepted in their entirety, no offence can be said to be made out against the applicants under section 468 of Indian Penal Code.

14. To attract an offence under section 471 of Indian Penal Code, essential requirement is that, there should be a use of forged document. As discussed here-in-above, none of the documents as alleged by the prosecution can said to be a forged document. When the preparation of a document does not amount to a forgery, the use of such document does not constitute as offence under this section.

15. As has been discussed here-in-above merely because in the in-put form and the cover page of the 'Deed of Sale' the applicants have showed the market value of the subject property derived at by the rate of Rs.3,500/- per Sq. Mtr. which was the ready recknoer rate published by the Government for the year 2007 for the zone under which the property in question is situated when according to prosecution the market value of the said property should have been determined at the rate of Rs.4,100/- per Sq. Mtr. which was ready recknoer rate for the year 2008 since the sale deed was being registered on 2nd of December, 2008, neither the in-put form, nor the deed of sale or any other document related thereto can be termed as a false or forged document.

16. Now, we will examine the correctness and the legality of the allegation against the applicants that they deliberately, showed the market value of the subject property less with a view to make wrongful gain for them and cause wrongful loss to the Government.

17. Stamp duty requires to be paid at the rate as prescribed under Article 25 of the Stamp Duty Act on the true Market Value of the property which is the subject matter of the conveyance. As defined by Section 2(na) of the Stamp Act 'Market Value' in relation to any property which is the subject matter of any instrument means the price which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument whichever is higher.

18. In the instant case, it is the specific allegation against the applicants that, they with fraudulent and dishonest intention did not disclose the true market value of the subject property while presenting the deed of sale of the said property for its registration before the Sub Registrar and thereby cheated the Government by causing revenue loss of Rs.12,76,000/-. The prosecution has assessed the market value of the subject property to the tune of Rs.7,05,20,000/-. It is assessed by determining the value of the said property at the rate of Rs.4,100/- per Sq. Mtr. The rate of Rs.4,100 per Sq. Mtr. Is derived from the ready recknoer rates published by the Government for

the year 2008 for the area / zone under which the subject property is situated.

19. Having regard to the definition of 'Market Value' as provided under section 2(na) of the Stamp Act the whole approach adopted as above by the prosecution in determining the market value of the subject property appears erroneous. As held by the Hon'ble Apex Court in the case of **Jawajee Nagnatham V/s. Revenue Divisional Officer, Adilabad, A.P. and Others (1994) 4 S.C.C. 595**, the Basic Valuation Register (for the instant matter the Ready Recknoer) prepared and maintained for the purpose of collecting stamp duty has no statutory base or force and it cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration.

20. Similar view is taken by the Hon'ble Apex Court in the subsequent judgment in the matter of **R. Sai Bharathi V/s. J. Jaylalitha and other (2003 AIR S.C.W. 6349)**. The Hon'ble Apex Court has held that,

"... the guideline value will only afford a prima-facie base to ascertain the true or correct market value. Guideline value is not sacrosanct, but only a factor to be taken note of if at all available in respect of an area in which the property transferred lies. In any event, for the purpose of Stamp Act guideline value alone is not a factor to determine the value of the property and the authorities cannot regard the guideline valuation as the

last word on the subject of market value."

21. In view of the law laid down as above by the Apex Court, the very foundation of the charge leveled against the applicants that the market value of the subject property was deliberately shown less by them with a view to earn wrongful gain gets uprooted.

Secondly, even if it is assumed that the market value of the property in question was shown less by the applicants, the registering officer i.e. the Sub Registrar, Aurangabad could have very well referred the instrument to the Collector for determination of the true market value of the said property under section 32 A(2) of the Stamp Act. Sub Registrar, Aurangabad admittedly did not adopt the said course and preferred to register the instrument by accepting the stamp duty payable on the market value as was shown of the property in question. The Sub Registrar, thus, impliedly accepted the value as set-forth in the instrument to be the true market value of the subject property.

22. In fact, the consideration paid of Rs.3,60,00,000/- of the property in question can be accepted to be the true market value of the said property since the applicants purchased the said property in public auction. The material on record reveal that the vendor society had issued proclamation in 'Daily Lokmat' and invited tenders for purchase of the subject land. The averments in the Sale Deed executed of the subject land reveal that, in response to the paper publication various

prospective purchasers approached to the vender society and submitted their proposals and on 24.06.2008 in terms of negotiations and since the highest consideration to the tune of Rs.3,60,00,000/- was offered by the present applicants the vendor society resolved to sell the subject land to the applicants.

As defined in Section 2(na) of the Stamp Act the price fetched by the property in an open market is to be held as the market value of the said property on the day of execution of the instrument in relation the said property. There is reason to believe that on considering the recitals in the sale deed reflecting that the property has been purchased in an open auction for the consideration of Rs.3,60,00,000/- and despite that the stamp duty was being paid on the value of Rs. 4,50,00,000/-, the Sub Registrar accepted the said document for registration and allowed its registration without indulging in any further enquiry whether the market value as shown is assessed as per the 2008 ready reckoner rates published by the Government or otherwise. Further, as was submitted by the learned Counsel for the applicants, the property in question falls under the Green Zone and as such, whatever price was offered by the applicants to the said property, according to them, was the optimum, price. This may also be the reason that the Sub Registrar did not conduct any further enquiry or objected to the market value as shown of the property in question. Prima-facie, we find nothing to be blamed either on part of the applicants or the concerned Sub Registrar and his staff. Further, even if

it is accepted that, the market value of the subject property was shown less by the applicants and this aspect was overlooked by the Sub Registrar and his supporting staff, resulting in causing loss of revenue to Government, there exist the necessary provisions in the Stamp Act itself to take care of such situation / contingency. Sub Section (5) of Section 32 (A) of the Stamp Act provides that the Collector of the District may, suo-moto or on receipt of information from any source, within ten years from the date of registration of any instrument may examine it for the purpose of satisfying himself as to the correctness of the market value of the immovable property which is the subject matter of such instrument and the duty payable thereon, and if after such examination, he has reason to believe that the market value of such property has not been truly and fully set-forth in the instrument, he shall proceed as provided in Sub section (4) which reads thus:

(4) On receipt of the instrument of the true copy of the instrument as the case may be, under sub-section (2) or (3), the Collector of the District shall, after giving the parties concerned a reasonable opportunity of being heard and in accordance with the rules made by the State Government in that behalf, determine the true market value of the immovable property which is the subject matter of the instrument and the proper duty payable thereon. Upon such determination, the Collector of the District shall require the party liable to pay the duty, to make the payment of the amount required to make up the difference between the amount of duty determined under this sub-section and the amount of duty already paid by him and shall

also require such party to pay in addition, (a penalty [of 2 per cent for every month or part thereof] from the date of execution of the instrument on differential amount of stamp duty); and on such payment, the instrument received under sub-section (2) or (3) shall be returned to the officer or person referred to therein.

It is significant to note that the aforesaid course of action has already been resorted to against the applicants. The documents on record evince that a notice under section 32(A)(2) of the Act has been issued to the applicants on 16.06.2010. When such course was already availed, we find no propriety in initiating the criminal proceeding against the applicants under the provisions of Indian Penal Code and more so when there does not seem any cogent, concrete and sufficient material available against the applicants in that regard.

23. Similar controversy was involved in the matter of **Sanjay Shivaji Dhapse V/s. State of Maharashtra (2014 All M.R. (Cri.) 3617)**. In the said Petition, an offence was sought to be registered against the Insurance Company alleging that, it did not affix the stamp of sufficient amount and thereby caused loss of revenue to the Government and thus cheated the Government. The Division Bench of this Court, however rejected the said contention holding that not affixing stamp of adequate amount would amount to irregularity and it is always subject to verification / check by the concerned

Government Officer. The Division Bench also took note of the fact that, in response to the notice received, the Insurance Company has paid the deficit stamp duty.

24. After having considered the entire material on record it appears to us that, on the basis of such record at the most offences under section 59 and 62 may be attracted against the applicants, but, in no case any of the offence under Indian Penal Code, as alleged, can said to be made out against them. If at all any guilt seems to be attributable on part of the applicants, it is that of not showing the market value of the subject property determined by applying the ready reckoner rates published by the Government for the year 2008; but then the offence which may be made out would be under the penal provision of the Stamp Act i.e. under sections 59 and 62 of the said Act and not under the Indian Penal Code. In view of the specific provisions in the Stamp Act in regard to the alleged intention of evading stamp duty and punishment provided for the same, general provisions of Indian Penal Code may not apply.

25. In so far as the prosecution under the provisions of Stamp Act are concerned, it is the further contention of the applicants that, in view of Section 59-A of the Act no prosecution would lie since the subject instrument was produced before the 3rd Joint Civil Judge, Senior Division, Aurangabad in Special Civil Suit No.514/2009, and the same has been admitted by the said

Court. However, we do not wish to enter into the merits of the said matter. Suffice it to say that, the allegations made in the F.I.R. and the material placed on record in support thereof even if taken at their face-value and accepted as it is, do not constitute any of the offence as alleged therein against the applicants under the provisions of Indian Penal Code. We have already noted that the offence as alleged under the Prevention of Corruption Act would not be attracted against the applicants.

26. In the circumstances, the continuation of the criminal proceedings against the applicants in so far as it relates to the offences under Indian Penal Code, and Prevention of Corruption Act, would amount to the abuse of the process of the Court.

We, therefore, quash the F.I.R. and the further criminal proceeding being Crime No. I-141/2012 to the extent it relates to the offences under Indian Penal Code and the Prevention of Corruption Act against the applicants.

Rule made absolute in above terms.

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