

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CRIMINAL APPELLATE JURISDICTION

CR. WRIT PETITION NO. 554 OF 2006

1. Shri Ramkrishna Janardhan Gosavi
Age 47 years, Occupation Agri & Service
2. Shri Manoj Ramkrishna Gosai
Age 19 years, Occupation Agriculture,
Both R/at : Mahud Budruk, Tal. Sangola,
District Solapur. **.....Petitioners.**

Versus

1. Shri Suresh Janardhan Gosavi
Age 40 years, Occupation Agriculture & Service
R/o. Mahud Budruk, Tal. Sangola,
District Solapur,
Presently staying at Sujay Nagar,
Akluj, Tal. Malshiras, District Solapur.
2. The State of Maharashtra **.....Respondents.**

- *Adv. Umesh Mankapure Adv. Benazir Jamadar, Adv. Siyal Magdum & Adv. Parth Pitambare for Petitioners.*
- *Adv. Vishwanath Talkute a/w. Adv. Mahesh Bhosale for the Respondent No.1.*
- *Adv. S.H. Yadav, A.P.P. for the Respondent No.2.*

Coram : ASHWIN D. BHOBE, J.

Date : 30th September 2026.

ORAL JUDGMENT:

1. Heard, Mr. Umesh Mankapure, learned Advocate for the Petitioners, Mr. Vishwanath Talkute, learned Advocate for the Respondent No.1 and Mr. Yadav, learned A.P.P. for the Respondent No.2-State.

2. By this Petition filed under Article 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code, 1973 ("Cr.PC."), the Petitioners assail the Judgment and Order dated 13th October 2005 passed by the Additional Sessions Judge, Pandharpur ("Revisional Court"), which rejected the Criminal Revision Application No. 133 of 2004 filed by the Petitioners, thereby maintaining the Order dated 27th July 2004 passed by the Judicial Magistrate First Class, Sangola ("Magistrate") in Regular Criminal Case No. 77 of 2004, which issued process against the Petitioners under Sections 420 and 422 read with Section 34 of the Indian Penal Code, 1860 ("IPC").

3. The material facts relevant to the present petition are that Respondent No. 1 instituted Regular Civil Suit No. 88 of 1994 against the Petitioners, seeking partition and separate possession. The suit was decreed in favour of Respondent No. 1 on 03.01.2004, whereby he was allotted a share in the house properties bearing Gram Panchayat House Nos. 549/A and 460/A, corresponding to City Survey Nos. 349-A, 349-B, 349-C and 349-D, situated

at Mahud Budruk. Despite knowledge of the said judgment, the Petitioners, in furtherance of their common intention, mortgaged the said properties with Pandharpur Urban Co-operative Bank, Sangola Branch, by falsely representing that the properties were free from any pending court dispute and obtained a loan of Rs. 3,00,000/-, thereby intending to deprive Respondent No. 1 of his share and causing him financial loss. Based on these allegations, Respondent No. 1 filed a private complaint before the Trial Court in Regular Criminal Case No. 77 of 2004, alleging offences punishable under Sections 420 and 422 read with Section 34 of the Indian Penal Code.

4. The Magistrate, by order dated 22nd April 2004, passed the following order:

“Read complaint, heard Advocate. It appears that, matter is related with civil dispute. Hence, there should be investigation at the hands of police. Therefore, matter be sent to PI., Sangola with direction to hold investigation under Section 156(3) of Cr. P.C. and take action if necessary and submit the report on or before 07.06.2004.”

5. Subsequently, on 27th July 2004, the Magistrate, upon taking cognisance of the charge-sheet, issued process in Regular Criminal Case No. 77 of 2004 for offences punishable under Sections 420, 422 and 34 of the IPC.

6. Aggrieved by the Order dated 27th July 2004 passed in Regular Criminal Case No. 77 of 2004, the Petitioners filed Criminal Revision Application No. 133 of 2004 under Section 397 of the Cr.P.C. before the Revisional Court. The Revisional Court, by the Judgment and Order dated 13th October 2005, dismissed the Criminal Revision Application (“impugned judgment”).

7. Dissatisfied, the Petitioners have approached this Court by way of this petition.

8. On 5th June 2006, while issuing the Rule, the following order was passed, granting interim relief:-

“*None appears for respondent No.1 though served. Mr. More, learned Counsel for the petitioners submits that on 30th January, 2006, the petitioner has paid the entire amount to the bank with interest and in view thereof, nothing survives in the complaint filed by respondent No.1, who is real brother of the petitioner.*

2. *In view of this, Rule.*

3. *There shall be ad interim relief in terms of prayer clause (c).”*

9. Mr. Umesh Mankapure, learned Advocate for the Petitioners, submits that the subject matter of Regular Criminal Case No. 77 of 2004 before the Magistrate is purely a civil dispute inter se between the Petitioners on one

side and Respondent No.1 on the other, who claim rights in the property. He submits that the issue of Respondent No.1 having a share in the property is not concluded. He submits that although Regular Civil Suit No.88 of 1994 was decreed by the Trial Court, the Petitioners filed an appeal before the District Court. After the appeal was dismissed, the Petitioners are presently before this Court in Second Appeal No.39 of 2007 and are secured by an interim order. He submits that the ingredients of Section 420 of the IPC, or for that matter Section 422 of the IPC, are not made out. He therefore submits that the impugned judgment of the Revisional Court is liable to be set aside.

10. Mr. Umesh Mankapure, learned Advocate for the Petitioners, states that the loan amount of Rs.3,00,000/-, obtained by mortgaging the property, was repaid by the Petitioners on 13th January 2006 and that the mortgage has been cleared.

11. Mr. Vishwanath Talkute, learned Advocate for Respondent No. 1, submits that the Petitioners had no right to mortgage the property without the consent of Respondent No. 1, who was held entitled to a share in the property by the judgment dated 03.01.2004 in Regular Civil Suit No. 88 of 1994. He however does not dispute that the subject matter of Regular Civil Suit No. 88 of 1994 is pending adjudication before this Court in the Second

Appeal No.39 of 2007. Mr Vishwanath Talkute submits that although the loan amount is paid, it was paid after the passing of the impugned judgment.

12. Perused the record with the assistance of the learned Advocates for the parties.

13. Respondent No. 1 contends that he has a share in the subject property by virtue of the judgment and decree dated 03.01.2004 passed in Regular Civil Suit No. 88 of 1994. The grievance in Regular Criminal Case No. 77 of 2004 is that the Petitioners dealt with the said property by obtaining a loan from Pandharpur Urban Co-operative Bank, Sangola Branch, without the consent of Respondent No. 1. Respondent No. 1 claims loss on account of the said act of the Petitioners, thereby constituting the offence.

14. Respondent No. 1 neither states nor claims to have paid any part of the loan amount to Pandharpur Urban Co-operative Bank, Sangola Branch. Further, the complaint does not suggest that Respondent No. 1 was dispossessed of the property after the grant of the loan. The Petitioners have paid the loan amount.

15. The judgment and decree dated 03.01.2004 passed in Regular Civil Suit No. 88 of 1994 has not attained finality, as the Second Appeal No. 39 of 2007 in that regard is pending.

16. A perusal of the complaint does not disclose the ingredients required to attract the provisions of either Section 420 or Section 422 of the IPC. The case set up by Respondent No. 1 in Regular Criminal Case No. 77 of 2004 is predominantly civil in nature and lacks any element of criminality.

17. It would be a different matter if the Pandharpur Urban Cooperative Bank Limited had lodged a grievance alleging any dishonest intention on the part of the Petitioners or any misrepresentation by the Petitioners to the Bank. Mr. Vishwanath Talkute, learned Advocate for the Respondent No.1, in all fairness, states that the Pandharpur Urban Cooperative Bank Limited has not filed any complaint.

18. At any rate, the issue of the claims and counterclaims in respect of the subject property is pending adjudication in the civil lis between the Petitioners and Respondent No.1.

19. The Revisional Court has not considered the aforesaid aspect of the matter and appears to have been persuaded by the proposition that a criminal case is maintainable even if the issue pertains to a civil case. However, the Revisional Court overlooked that to attract criminal liability, the ingredients of the offence arising from the transaction must be disclosed. In the case at hand, the ingredients of the alleged offences are conspicuously absent.

20. The impugned judgment suffers from perversity and illegality and accordingly requires interference in the supervisory jurisdiction of this Court. This petition is therefore allowed. The impugned judgment and order dated 13th October 2005 in Criminal Revision Application No. 133 of 2004 is quashed and set aside. Consequently, the order dated 27th July 2004 in Regular Criminal Case No. 77 of 2004 is set aside and Regular Criminal Case No. 77 of 2004 filed by Respondent No. 1 is dismissed.

21. It is clarified that the observations in this order are confined to the adjudication of the criminal case and shall not influence the pending civil dispute between the parties.

22. The Criminal Writ Petition No. 554 of 2006 is disposed of.

23. No order as to costs.

[ASHWIN D. BHOBE, J.]

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