

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 14 OF 2011

Ajay s/o. Asaram Modi

....Petitioner.

Versus

Smt. Kesharbai w/o. Asaram Modi
and Anr.

....Respondents.

Mr. A.H. Kasliwal, Advocate for petitioner.

Mr. V.M. Kagne, Advocate for respondent No.1.

Mr. B.L. Dhas, APP for respondent No. 2.

**CORAM : T.V. NALAWADE &
SMT. I.K. JAIN, JJ.**

DATED : 30th March, 2015.

ORDER :

1. The petition is filed for relief of quashing of the chargesheet filed in FIR No. 107/2010 dated 23.6.2010 registered in Shivaji Nagar Police Station, Nanded for the offences punishable under sections 405, 406, 420, 465, 468 of Indian Penal Code on the basis of order made by the learned Judicial Magistrate, First Class, Nanded under section 156 (3) of Criminal Procedure Code in a private complaint filed by respondent No. 1. Both the sides are heard.

2. Respondent No. 1 is mother of petitioner and at the

relevant time, she had reached 80 years of age. It is her case that house property bearing CTS No. 4306 situated at Gokulnagar, Nanded was purchased for her under sale deed of 1960 and she was living in this house. Petitioner is youngest son of respondent No. 1. It is her case that her husband died in the year 2004 and after the death of her husband, the petitioner started looking after her property. It is her case that she trusted the petitioner as she had love for the petitioner and petitioner had shown sincerity in the discharge of his duty. It is her case that he was taking care of bank account of complainant also.

3. Respondent No. 1 has made allegations that in the year 2007, the petitioner made false representation to her and he obtained her signatures on various documents including the power of attorney. It is her case that she went on signing on documents and executing the documents as she trusted the petitioner. It is her case that many signatures were obtained on blank papers and she did not hesitate to sign on them as she believed that the petitioner was doing everything to protect her property. It is her case that after March 2007, she started feeling that the conduct of the petitioner was changed and as there was dispute, she started living in another house separate from the petitioner. It is her case that subsequently, she realized that the

petitioner had fraudulently prepared the sale deed dated 9.3.2007 in respect of the aforesaid house in his favour by showing some consideration. It is her case that when she realized that she was cheated, she filed civil suit and another proceeding. She requested the J.M.F.C. to take proper action and then the order under section 156 (3) of Cr.P.C. was made. Crime was registered for the offences punishable under sections 420, 468 etc. of I.P.C. The chargesheet is now filed for offences punishable under sections 405, 406, 420, 465, 468 of I.P.C.

4. The learned counsel for the applicant took this Court through various documents like copy of agreement dated 3.2.2007, copy of notice published in daily newspaper regarding the proposed transaction between the petitioner and respondent No. 1 and copy of sale deed. He submitted that the property was sold to petitioner by respondent No. 1 and the consideration amount was paid by cheque. Copy of bank account statement of respondent No. 1 is produced to show that this cheque was encashed in the account of respondent No. 1.

5. This Court has gone through the papers of investigation, which include the statement of other son of respondent No. 1 and also the statements of two persons, who

had withdrawn the amount from the account of petitioner. It appears that the cheque for Rs. 7.2 lakh was encashed on 13.3.2007 and from 15.3.2007 to 26.3.2007 most of the amount from this consideration was withdrawn by using cheques. The cheques were bearing consecutive numbers. It is the case of respondent No. 1 that she was living with petitioner. She was aged about 80 years and in view of these circumstances, it was necessary to show as to what was done with the amount of Rs. 6.25 lakh, if this amount was withdrawn within 11 days. There is no reply to this query from the petitioner. Attempt was made by this Court to see as to whether the matter can be settled and the matter was sent to mediator, but the dispute could not be settled.

6. The learned counsel for petitioner submitted that the elder brother of petitioner is behind this complaint and he has the grievance that he could not get anything. There are many circumstances which can be used to draw inference in such a case. Firstly, the age of the respondent No. 1 was around 80 years at the relevant time. Even when there was relationship like mother and son, separate document like agreement was shown to be prepared and under that document, the amount of Rs. 30,000/- was shown to be paid. This amount was, however, not

credited in the account and that can be seen from the account statement. The stamp papers were purchased by person like Bhimrao Suryawanshi. Notice was published in newspaper like 'Sanj' from Nanded dated 27.2.2007 and the sale deed was executed on 9.3.2007. The market value of the property was shown as Rs. 17.14 lakh. It was shown that the property was sold for consideration of Rs. 7.2 lakh. The witnesses were not relatives of petitioner and respondent no. 1. If at all the mother wanted to give property to petitioner, she could have given in any way, but she would have taken care to see that her relatives remain present at the relevant time. It was her absolute property and there are aforesaid circumstances. She is feeling that she is cheated in view of the aforesaid circumstances. It cannot be said that false case is filed or it is a dispute of purely civil nature.

7. The learned counsel for the petitioner placed reliance on some reported cases which are as under :-

(i) AIR 1992 SUPREME COURT 604 (1) [State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors.],

(ii) 2010 ALL SCR 1921 [Shanti Budhiya Vesta Patel & Ors. Vs. Nirmala Jayprakash Tiwari & Ors.],

(iii) (2007) 13 Supreme Court Cases 107 [B. Suresh Yadav Vs. Sharifa Bee and Anr.],

**(iv) 2011 ALL SCR 1601 [Joseph Salvaraj A.
Vs. State of Gujrat & Ors.].**

The facts and circumstances of each and every case are always different. The same set of circumstances may give right to civil action and they can also make out offence. In view of the facts and circumstances of this case, this Court holds that there is sufficient material to make out the offence of cheating and misappropriation. It is not possible to quash the proceeding filed against the petitioner after making investigation of the case.

8. In the result, the petition stands dismissed.

[SMT. I.K. JAIN, J.]

[T.V. NALAWADE, J.]

SSC/