

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.202 OF 2015

Kishore Bhabutmal Shah,
Age-44 years, Occu:Business,
R/o-21/3, Parwati Nagar,
Jalgaon, Tq. & Dist-Jalgaon.

...APPLICANTS

VERSUS

- 1) Raman Rajiv Agarwal,
Age-20 years, Occu:Business,
R/o-186, Polan Peth, Jalgaon,
Tq.& Dist-Jalgaon,
- 2) Heetendra Mohanlal Mehta,
Age-48 years, Occu:Agriculture,
- 3) Sau. Ushma Heetendra Mehta,
Age-45 years, Occu:Housewife,

Both R/o-120, Polan Peth,
Jalgaon, Tq. & Dist-Jalgaon.

...RESPONDENTS

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Mr.Girish A. Nagori Advocate for Applicant.
Mr.A.V. Patil (Indrale) Advocate for
Respondent No.1.
Mr.Girish Rane Advocate for Respondent
Nos. 2 & 3.

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CORAM: A.I.S. CHEEMA, J.

DATE : 26TH NOVEMBER, 2015

ORDER :

1. Heard counsel for both sides.

2. It is stated on behalf of the Applicant-original complainant that the Respondents-original accused cheated the Government, as earlier the Respondent Nos.2 and 3 sold the property to Respondent No.1 showing in the sale deed that it was an open plot and on that basis paid stamp duty. Soon thereafter Respondent No.1 sold some portion of the said property showing the same as a plot with construction which was 150 years old. Thus, according to the counsel the Government and thus public was cheated of the stamp duty which was liable to be paid. The learned counsel submitted that the reasons recorded by the trial Court are not correct. The learned counsel submitted that the reasons

recorded by the trial Court are not correct and merely by referring to the provisions of the Maharashtra Stamp Act, the accused could not have been acquitted as offence under Section 420 of the Indian Penal Code is also made out.

3. Learned counsel for Respondent No.1 submitted that Section 59 of the Maharashtra Stamp Act provides for penalty when the instrument is not duly stamped. According to the counsel, under Section 64 of the Maharashtra Stamp Act, no prosecution under the Act could be launched without sanction of the Collector. According to him, difference of stamp duty concerned, was paid when deficiency was pointed out. According to the counsel, trial Court rightly considered the matter and acquitted the accused. According to the counsel, complainant is third party and has nothing to do with the transaction.

4. Learned counsel for Respondent Nos.2

and 3 submitted that they were the vendors and liability of paying the stamp duty was of Respondent No.1. The said fact is admitted in the evidence and thus there was no offence made out against Respondent Nos. 2 and 3.

5. No doubt, under the Maharashtra Stamp Act, there is provision to take criminal action. However, it is admitted fact that no criminal action under the provisions of the Maharashtra Stamp Act has been taken. The difference in amount of stamp duty, no doubt, has been paid. The trial Court has also referred that no charge was framed under the Stamp Act. The fact that Respondent Nos.2 and 3 were executing the sale deed in favour of Respondent No.1 without correctly describing the property, is a matter of consideration. People do have tendencies to resort to such means to avoid stamp duty. Even if the act attracted penal provisions under the Stamp Act, it does not mean that offence made out under Sections of the Indian

Penal Code be ignored. Looking to the facts of the matter, it is necessary to re-appreciate the evidence as well as the law on the subject, whether Section 420 or any other Section of the Indian Penal Code was made out and the Respondents were liable to be punished for the offence. Had the property been correctly described, the Registrar registering the sale deed would not have registered the sale deed for the stamp duty which was tendered. Thus, it is a matter of consideration whether action under Indian Penal Code was required to be taken.

6. For the above reasons, Application is allowed. Leave is granted. Application be converted into Appeal.

7. Appeal is **Admitted**. Mr. Patil, learned counsel waives notice for Respondent No.1, after admission of the Appeal. Mr. Rane, learned counsel waives notice for Respondent Nos.2 and 3, after

admission of the Appeal.

8. Paper Book be got prepared.

9. Action under Section 390 of the Code of Criminal Procedure be taken against the Respondent Nos. 1, 2 and 3 in the trial Court.

[A.I.S. CHEEMA, J.]

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