

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No.3770 of 2014

- 1) Ganesh Rambhau More,
Age 46 years,
Occupation : Agriculture and
Business,
R/o Ramalaya, 1881/B-2,
Gat No.4, Kholgalli, Dhule.
 - 2) Yuvraj Narayan Warude,
Age 53 years,
Occupation : Agriculture and
Business,
R/o. 1914/A, Gat No.5,
Kisan Batti Chowk, Dhule,
Taluka and District Dhule.
 - 3) Rajesh Yashwant Mahale,
Age 45 years,
Occupation : Agriculture and
Business,
R/o. 165, Satya Saibaba Colony,
Sakri Road, Dhule.
- .. Applicants.**

Versus

- 1) The State of Maharashtra
Through Mohadi Police
Station, Taluka and District
Dhule.
 - 2) Dayaram Dharoji Pawar,
Age Major,
Occupation : Retired
R/o Gartad (Gadutar),
Taluka and District Dhule.
- .. Respondents.**

Shri. Amol S. Sawant, Advocate, for applicants.

Shri. S.B. Pulkundwar, Additional Public Prosecutor, for respondent No.1.

Shri. A.B. Girase, Advocate, for respondent No.2.

**CORAM: T.V. NALAWADE
INDIRA K. JAIN, JJ.**

DATE : 30th APRIL 2015

JUDGMENT:

1) Rule, rule made returnable forthwith. Heard both the sides for final disposal by consent.

2) The proceeding is filed for relief of quashing and setting aside First Information Report of Crime No.86/2014 registered in Mohadi Police Station, District Dhule for offences punishable under sections 420, 464, 467, 468, 470, 471, 34 of the Indian Penal Code. The crime is registered on the basis of order made by the Judicial Magistrate First Class, Dhule in Misc. Criminal Application No.349/2014 for making investigation under section 156(3) of the Code of Criminal Procedure. This proceeding was filed by Dayaram Pawar, respondent No.2.

3) It is the case of Dayaram Pawar that one Pitambar, now deceased, wanted to sell his agricultural land bearing Gat No.14 situated at village Gartad, Tahsil Dhule and he agreed to purchase the property from Pitambar. He has contended that one document was executed and consideration of Rs.1,20,000/- was given by him to Pitambar. It is contended that this document was signed as witness by Kasubai, widow of Pitambar and Jibhau son of Pitambar. This document was executed in favour of wife of Dayaram. It is the case of Dayaram that representation was made by Pitambar that it was his self acquired property and no member of his family or other persons had share in this property. It is contended that sale deed was to be executed and registered within six months from this date and due to the promise given by Pitambar, consideration was paid and document, which was notarized, was executed on 6-6-2009.

4) It is the case of Dayaram that he was continuously asking Pitambar to execute the document of sale deed but Pitambar said that he was sick and so he wanted time for it. Pitambar died on 26-2-2010. It is the

case of Dayaram that he requested Kasubai, widow of Pitambar, to execute sale deed but Kasubai avoided to execute the sale deed by saying that her husband had died recently and she wanted time. It is the case of Dayaram that when he realised that the successors of Pitambar are avoiding to execute the sale deed, he made enquiry and then he got information that sale deed was executed by the successors of Pitambar in favour of accused No.7. It is contended that some record was created like relinquishment document by some successors of Pitambar in favour of Kasubai and then sale deed was executed. Dayaram has contended that when he made enquiry with the successors of Pitambar about their conduct they gave evasive answers and then he approached the police. As police did not take any action, Dayaram filed private complaint and order under section 156(3) of the Code of Criminal Procedure came to be made.

5) The agreement executed in favour of wife of the complainant is on the record and it shows that it was executed on 6-6-2009 on a stamp of denomination of Rs.100/- and it was notarized. In the document it was

mentioned that it was actually sale deed and possession was given. But the document was not registered and proper stamp duty was not paid. A query was made and learned counsel for the original complainant was asked as to whether entry in the crop cultivation was taken in favour of the wife of the complainant if possession was given to her. It was informed that no such entry was made in her favour. The 7/12 extract is also to that effect. On the other hand, there is registered sale deed and there is document of registered agreement of sale in favour of applicant No.3, Rajesh Mahale. The agreement was executed by Kasubai, Jibhau, the widow and son of Pitambar and Pramilabai, Kalpanabai, daughters of Pitambar. After the agreement, relinquishment deed was executed in favour of Kasubai by other successors of Pitambar and then the sale deed was executed in favour of Rajesh Mahale on 4-2-2014 by Kasubai, Jibhau, Pramilabai and Kalpanabai.

6) Even if it is presumed that the document which was executed in favour of the wife of the complainant can be treated as agreement, no step was taken by the wife of

complainant like filing civil suit for specific performance of the contract. Further there is no record to show that, wife of the complainant was actually cultivating the land and entries in the crop cultivation column were made accordingly from the year 2010. Due to the agreement no right or interest is created in the property. The so called notarized sale deed has no value. The grievance of the present applicants is that sale deed was executed in favour of applicant No.3 and other applicants were involved in preparation of the relinquishment document. By no stretch of imagination it can be said that they have committed offence for which the crime is registered. If at all wife of the complainant or the complainant is deceived that was done by the successors of Pitambar. It will be abuse of process of law if the criminal action is allowed to continue against the present applicants.

7) The learned counsel for original complainant has placed reliance on a case reported as **(2009) 3 SCC 78 (V.Y. Jose v State of Gujarat)** and he submitted that same set of facts can give rise to both civil and criminal action and so both the actions are possible. Facts of each

and every case are always different. Relevant facts of the present matter are discussed. This Court holds that the application deserves to be allowed.

8) The Criminal Application is allowed. The First Information Report of Crime No.86/2014 registered in Mohadi Police Station, Tahsil Dhule for the aforesaid offences to the extent of the present applicants is quashed and set aside. However it is made clear that the proceeding or criminal action can go on as against other accused who have not come before this Court and particularly against the successors of Pitambar. Rule is made absolute in aforesaid terms.

Sd/-
(INDIRA K. JAIN, J.)

Sd/-
(T.V. NALAWADE, J.)

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