

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

Criminal Application No. 4580 of 2014

Kashinath s/o Tejrao Mirge
And Another.

.. Applicants.

Versus

Devidas s/o Bapurao Patole
And Another.

.. Respondents.

Shri. P.F. Patni, Advocate, for applicants.

Shri. Hemant Surve, Advocate, for respondent No.1.

Shri. P.N. Mule, Additional Public Prosecutor, for
respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 17th JULY 2015

ORDER:

1) The application is filed under section 482 of the Code of Criminal Procedure for challenging the judgment and order made by the learned Additional Sessions Judge delivered in Criminal Revision No.3/2014. The revision was filed by the present applicants against the order of issue process made in RCC No.1008/2013 by the learned Judicial Magistrate, First Class, Aurangabad. Both the sides are heard.

2) In the complaint filed by respondent Devidas allegations are made that accused No.1 Kashinath, who is Advocate by profession, published a notice in daily news paper and he made false contention regarding agreement between him and the complainant. Allegations are made that there was no such agreement between the complainant and the accused No.1 but the said notice was published and further steps were taken by filing objection petition with the Cidco to prevent the complainant from making transaction in respect of immovable property which is house property situated in Cidco. It is contended that accused No.2, who is daughter-in-law of the complainant, is close relative of the accused No.1 and they are acting together against the complainant. Allegations are made that accused No.2 also made similar application with Cidco to create obstacles in the transaction which the complainant can make in respect of the property. It is contended that opportunity was given to accused No.1 to explain the things and show record with regard to the transaction mentioned in the public notice but no such record was shown. The verification of the complainant was recorded and the learned Judicial Magistrate issued

process for offences punishable under sections 420 etc. of the Indian Penal Code.

3) Learned counsel for the accused submitted that the allegations as they are do not make out any offence. He submitted that ingredients of section 420 of the IPC are not made out and at the most it can be called as dispute of civil nature. Learned counsel for the applicants has placed reliance on following reported cases :

- (i) **2006 (1) Mh.L.J. (Cri) 1007 (Asaram v. Suryakant);**
- (ii) **2009 (1) Mh.L.J. (Cri.) 429 (Brajo vs. State of Maha.;**
- (iii) **2009 (3) Mh.L.J. (Cri.) 374 (S.V.L. Murty vs. State);**
- (iv) **(2002) 1 SCC 241 (S.W. Palanitkar v. State of Bihar);**
- (v) **(2005) 3 SCC 670 (Suresh v. Mahadevappa);**
- (vi) **(2005) 13 SCC 699 (Murari Lal Gupta v. Gopi Singh).**

4) The facts of the cases cited supra were altogether different and the Hon'ble Apex Court has discussed the ingredients of 420 IPC and the responsibility for proving of the offence. There cannot be dispute over the proposition made about section 420 IPC by the Apex Court. The facts of the present are altogether different.

6) The accused No.1 is an Advocate by profession and the complainant is also an Advocate. In the notice published, the accused No.1 informed to public that the accused had purchased the property from the complainant Devidas and his brother Subhash for consideration of Rs.1.25 lakh and accordingly the document was prepared. It was informed that the transaction was binding on these two brothers. Information was given to the public that the transaction if any made by the public will not be binding on the accused No.1 and public should not enter into such transaction with these two brothers.

7) A query was made by this Court to the learned counsel for the applicant that whether any civil suit was filed in respect of the transaction. It was informed that there was only oral agreement and so civil suit is not filed. He was asked as to whether any record about payment is made and to that also the reply was in negative. Thus there is virtually no record with accused No.1 but the aforesaid public notice was given by him. Present applicants, accused Nos.1 and 2 are acting together and that can be seen from the applications given to the Cidco

and in the present application also they have come together. Loss can be caused in many ways. In peculiar circumstances, loss needs to be inferred. The dishonest intention needs to be shown and that too *prima facie* for order of issue process. The aforesaid circumstances are sufficient to make out a *prima facie* case for offence. The trial Court can also find out whether other offences are also committed but that can be done on the basis of evidence. This Court holds that it is not possible to interfere in the decision given in the revision. The proceeding is dismissed. The observations made are for the purpose of the present proceeding.

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

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