

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3248 OF 2015

Mrs. Kamalabai Jagannath Pawar & Anr.... Petitioners
vs.
The State of Maharashtra & Anr. ... Respondents

Mr. Abhijeet Desai i/b. Ms. Vrushali L. Maindad, Advocate, for the
petitioners
Mrs. A.A.Mane, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 7th September, 2015.

P.C.

Learned APP waives service for respondent No.1. No notice is issued to respondent No.2. Heard. Rule. Rule returnable forthwith with consent of the parties.

2. It is the case of the prosecution that the complainant i.e. respondent No.2 herein Mrs. Asha Suryakant Suryavanshi, had filed a complaint before the Judicial Magistrate, First Class at Pune, on 6.10.2012 against the present petitioners alleging therein that the complainant had purchased one acre land from the present petitioners on 23.8.1997. It was purchased by a registered sale deed and the number of registration was 2972/1990. The mutation entry was effected on the basis of the registered

sale deed. It was registered as Mutation Entry No.17361. Despite there being mutation entry, the name of the complainant was not recorded in the 7 x 12 extract. It was agreed between the parties that the records would be made by the present petitioners. The complainant had approached the petitioners on several occasions but to no avail. The complainant had assumed that the entries were deliberately not recorded at the behest of the petitioners. When the complainant insisted upon the petitioners, it is alleged that the petitioners had abused and humiliated the complainant. The complainant had also approached the police station. However, the police had not taken cognizance of her complaint. The complainant had also sent a report to the police station by post. On 28.3.2008, the complainant had urged the office of the Tahsildar for enquiry and at that time, it was revealed that on 21.1.2008, there was a registered sale deed in favour of one Santosh Bhosle. The sale deed was executed by the present petitioners. It was apparent that there were two sale deeds in respect of the same property. The complainant has further alleged that the said property was then mutated in the name of the third person. The complainant had approached the petitioners on 7.4.2008. However, the complainant was asked to approach after 3 months. In 2008, after 3 months, the complainant had again approached the petitioners. The petitioners had given false assurances.

Thereafter, the complainant had informed the petitioners that she would approach the Court. The petitioners allegedly told the complainant to approach the Judicial Court if she wishes to go. The complainant has therefore filed an application and has alleged that the petitioners herein had committed fraud by cheating the complainant and the sale deed which was executed in favour of the complainant was subsequently sold to a third person. The complainant had also given a list of witnesses. The verification statement was recorded by the learned Magistrate on 6.10.2012 and by an order dated 7.11.2012, the learned 24th Judicial Magistrate, First Class was pleased to issue process against the petitioners for the offence punishable under Sections 420, 504, 506 read with Section 34 of Indian Penal Code.

3. The learned Magistrate had recorded the evidence of the witnesses to ascertain as to whether a case is made out for framing of charge. The learned magistrate had recorded the substantive statements of the two witnesses. The learned Magistrate had then posted the matter for framing of charge. The learned Magistrate by an order dated 16.3.2015 has recorded that there is sufficient material for framing of charge. The learned Magistrate has also recorded that after examination-in-chief of two

witnesses, the learned counsel for the accused has declined to cross-examine the witnesses and has deferred the cross-examination till framing of charge. The order dated 16.3.2015 is being impugned by this petition.

4. It is a matter of record that the petitioners herein had not filed a discharge application. No application was made for modifying the proposed charge. The order dated 16.3.2015 was challenged by the petitioners by filing Revision Application before the District Court, Pune. In the Revision Application, the applicant herein had contended initially that the ingredients of Section 420 of IPC or Sections 504 and 506 read with Sec. 34 of IPC are not attracted in the present case. The learned Sessions Court by an order dated 9.7.2015 has been pleased to reject the Revision Application. Hence, this Writ Petition.

5. The learned counsel for the petitioners has vehemently contended that the subsequent purchaser has not made any grievance of cheating. That the complainant herein was put into possession of the said property in 1997 and she continued to remain in possession. According to the learned counsel, there was no occasion for the complainant to allege that the complainant has been cheated because there was mutation entry to

that effect. It is further contended that there is a delay of more than 3 years in setting the law into motion. At this stage, it cannot be overlooked that the complainant has specifically contended in the complaint that she had made several efforts to approach the police and had also sent complaints by post to the police station, but to no avail. It is also contended in the complaint that the complainant had approached the petitioners on several occasions intermittently requesting him to correct the records. That she had relied upon the assurances given by the petitioners and therefore has not set the law into motion.

6. It is not denied that the petitioners had executed a registered sale deed in favour of the complainant on 23.8. 1997. It is also contended that the petitioners had executed a second sale deed in favour of Santosh Bhosle. On the date of execution of the subsequent sale deed, the petitioners were not the owners of the said property as they had already executed a sale deed in favour of the complainant. This by itself is sufficient to infer that there has been an allegation of cheating as the petitioners had created a third party interest in the property which was already sold in favour of the complainant. According to the learned counsel, in fact it would be Bhosale who would be aggrieved by the

subsequent execution of sale deed. This contention cannot be accepted for the simple reason that once a sale deed was executed in favour of the complainant on 23.8.1997, the petitioners had no authority to create third party interest as they had passed the title as well as possession of the said property in favour of the complainant. The learned counsel further submits that it is a civil dispute and criminal prosecution is unwarranted. The petitioners had parted with title of the property in favour of complainant and could not have sold it without their consent. The petitioners had received consideration towards the subsequent sale.

7. The learned counsel for the petitioner has placed reliance upon a Judgment of the Hon'ble Apex Court in the case of **Md. Ibrahim & Ors. vs. State of Bihar & Anr. AIR 2010 SC Weekly 405**. The learned counsel has placed implicit reliance upon the observations made in para 14 of the said judgment. However, each case has to be decided on its own facts and the case of **Md. Ibrahim** (cited supra) are totally in variance with the facts in the present case. It is also a matter of record that without availing of remedies available in law at the appropriate time, the petitioners have approached this Court seeking relief of quashing the charge under Section 420 of IPC. The said contention was never raised before the Revisional

Court. It is for the first time that the petitioners have contended that the ingredients of Section 420 are not attracted. However, it cannot be considered at this stage. The learned Magistrate has rightly arrived at a conclusion that there is sufficient material for framing of charge on the facts and the said order cannot be interfered with just for the asking of the accused. Once charge is framed, trial has to be taken to its logical end. In view of this, no interference is called for in the judgment and order recorded by the revisional Court.

The Petition being sans merits, stands dismissed. Rule is discharged accordingly.

8. The learned trial Court shall not be influenced by the observations made by this Court. They are restricted to issue of framing of charge under Section 420 of IPC. The learned trial Court shall record the proceedings in accordance with law and arrive at a conclusion on the basis of the evidence adduced at the trial.

Petition stands dismissed.

(SMT.SADHANA S.JADHAV, J.)