

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL (PVT) NO.461 OF 2013

Shri.Eknath Mahadu Navale ... **Applicant**

V/s.

Shri.Balasaheb Pralhad Kulkarni ... **Respondent**

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Mr.Sachin S.Gite, Advocate for the Applicant.

Mr.Amogh K.Karandikar, Advocate for the Respondent No.1.

Mr.Deepak Thakre, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 29TH APRIL 2015

P.C.

1. Heard.

2. The applicant had prosecuted the respondent No.1 on the allegation of his having committed an offence punishable under Section 420 of the Indian Penal Code. The Judicial Magistrate, First Class, Chandwad, Nashik District, after holding a trial, found the respondent No.1 not guilty and passed an order of acquittal. The applicant is aggrieved by the said order of acquittal and is, therefore, by the present application, seeking special leave of this Court to file an appeal therefrom.

3. For the sake of convenience and clarity, the applicant shall, hereinafter, be referred to as “the complainant” and the respondent No.1 as “the accused”.

4. I have heard Mr.S.S.Gite the learned counsel for the complainant in support of this application. I have heard Mr.A.K.Karandikar the learned counsel for the accused. I have gone the impugned Judgment.

5. In brief, the case of the complainant may be stated thus:

The complainant had purchased a certain land from the accused on 07/02/1992 for a consideration of Rs.51,000/-. In the revenue records the name of Smt.Shashikala Shamrao Joshi - the sister of the accused - was mentioned in the column of *other rights*. That, the accused had promised to the complainant that the name of his sister would be removed from the record of rights and an entry to that effect was made in the sale deed. The complainant later on i.e. - on 13/04/2006, sold the said land to one Smt.Mandakini Shinde. Mandakini Shinde observed that the name of Shashikala Joshi i.e. sister of the accused had not been removed from the revenue records and, therefore, withheld an amount of Rs.3,00,000/-, from the amount due and payable by her to the complainant towards the purchase of the said land. It is thereafter that the complainant levelled an allegation against the accused of his having committed the offence of cheating, by

making a false representation that he would get the name of his sister removed from the relevant revenue record.

6. The learned Magistrate observed that the accused had only assured to the complainant that *he would secure the consent of his sister Shashikala Joshi for getting her name removed from the revenue records* and not that the *name would be removed from the revenue records*. The Magistrate also observed that the sale deed between the complainant and accused was executed in the year 1992 and that till the year 2006, the complainant did not take any steps to have the relevant entry in the revenue record removed. The Magistrate also observed that the complainant was in the enjoyment of the said land as an owner thereof till he sold the same to Mandakini Shinde. The Magistrate also observed that neither the accused, nor his sister had taken any objection for the sale of the said land by the complainant to Mandakini Shinde. The Magistrate, therefore, observed that there was nothing to show that the accused had deceived the complainant in any manner. The Magistrate observed that the dispute between the parties is of a civil nature.

7. It is clear that neither the accused nor his sister have raised any claim against Smt.Mandakini Shinde. It is nobody's case that either the accused, or his sister, has any objection to the said Mandikini Shinde proclaiming to be the absolute owner of the

land in question. As a matter of fact, a statement that they have no objection is made before this Court also by the learned counsel for the respondent No.1.

8. The view of the matter as taken by the Magistrate is proper and legal.

9. Leave refused.

10. The application is rejected.

(ABHAY M. THIPSAY J.)