

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. WRIT PETITION NO. 3859 OF 2012

Mr. Mumtaz Ahmed Yunus Bhatkar ... Petitioner.

V/s.

1. The State of Maharashtra ... Respondents.
2. Smt. Abidabi Bawasaheb Bhatkar & Ors.

Mr. Mohd. Saeed A. Mohul, Advocate for the Petitioner.

Mr. Rajesh More, APP for the State.

Mr. Amit Date i/by Anil Galgali, Advocate for Respondent Nos.
2 to 5.

WITH

CRI. WRIT PETITION NO. 3862 OF 2012

Mr. Mumtaz Ahmed Yunus Bhatkar ... Petitioner.

V/s.

1. The State of Maharashtra ... Respondents.
2. Shri Suhas Damodar Sathe & Anr.

Mr. Mohd. Saeed A. Mohul, Advocate for the Petitioner.

Mr. Rajesh More, APP for the State.

Mr. Amit Date i/by Anil Galgali, Advocate for Respondent Nos.
2 to 3.

CORAM : M.L.TAHALIYANI,J.

DATE : 31st MARCH, 2015

P.C. :

1 Admit. By consent, heard finally at the admission stage.

2 The petitioner was the complainant in complaint case no. 34 of 2012 (Misc. Application No. 12 of 2012) pending in the court of Judicial Magistrate, First Class at Chiplun. Respondent Nos. 2 and 3 in criminal writ petition no. 3859 of 2012 were the accused. They were summoned to answer the charges for the offences punishable under sections 406, 420, 504, 506 read with section 34 of the Indian Penal Code by the learned Magistrate, F.C., Chiplun on the complaint made by the petitioners in both the writ petitions. The said order of process was challenged before the Sessions Court. The learned Sessions Judge passed a common order in the said case and two similar cases and set aside the order passed by the learned Magistrate.

3 The brief facts of the complaint can be reproduced as under, which form para 7 of the complaint.

“7. WHEREAS accused Nos. 1 & 2 executed a registered sale deed on 12.12.2011 with the help of accused Nos. 3 & 4 despite knowing the fact that there is stay on the order of the lower court and that too during the appeal period. And that the accused persons got the said sale deed registered by hiding the true facts from the office of the sub-registrar at Chiplun. And that the accused Nos. 3 and 4 were witnesses to this agreement. And hence by doing such act the accused persons have jointly and severely

cheated the complainant and his family members and also committed criminal breach of trust by selling the suit premises for Rs. 51 lakhs. (Rs. fifty one lakhs only/-). And now the accused persons are abusing the threatening to beat and kill the complainant, hence the complainant has approached your lordship for justice and help.”

The offences punishable under sections 504 and 506 of the IPC are described at para 10 as under :

“10. WHEREAS on 23.1.2012 when the complainant returned to Chiplun from ratnagiri at 2.45 pm at got off from the bus at power house bus stop, some unknown criminals who were more than six in number abused and caught the complainant and took him to isolated corner and threatened him to beat and kill him and asked him to withdraw the appeal filed before the upper zilla adhikari, ratnagiri and also civil suit filed at C.J.S.D. Chiplun. And also threatened him not to approach police, hence the complainant is filing present complaint before your honour for justice and help.”

As far as the offences punishable under sections 406 and 428 are concerned, it can be seen from para 7 that nothing is stated in the said para as to what amounted to criminal breach of trust and cheating. Some vague allegations are made and no details of alleged offences are given. As far as the offences

punishable under sections 504 and 506 are concerned, the allegations are made against the unknown persons.

4 In my view, therefore, the process could not have been issued on the basis of such allegations. The learned Sessions Judge has rightly allowed the revision application and has set aside the order of the learned Judicial Magistrate. I do not find any substance in both the petitions.

5 Both the petitions are dismissed.

(JUDGE)

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