

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

CRIMINAL APPLICATION NO. 2379 OF 2013

Uttam s/o Kisan Mule

...Applicant

VERSUS

Deoba s/o Panduji Mule and anr.

...Respondents

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Shri H.V.Humbe and Shri S.S.Nirkhee, advocates for applicant

Shri P.S.Agrawal, advocate for respondent no.1

Shri S.N.Morampalle, A.P.P. for respondent no.2/State

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CORAM : INDIRA K.JAIN, J.

DATED : 25th APRIL, 2016

ORDER :

By this application, applicant/original complainant seeks leave to appeal against the judgment and order, dated 20.2.2013, passed by the learned Judicial Magistrate, First Class, Sengaon, District Parbhani in R.C.C. No. 395 of 2008. By the said judgment and order learned Magistrate acquitted respondent no.1 of the offences punishable under Sections 465 and 423 of the Indian Penal Code.

2] Heard learned counsel for the parties.

3] It is not in dispute that respondent no.1 Deoba is cousin of complainant. According to complainant he purchased land Gat No. 38, situated at village Mazod on 9.5.1989. Due to sickness

complainant was admitted to the hospital at Nagpur. For a long time he was not available in the village. Taking disadvantage of the absence of complainant it is alleged that on 28.2.1994 respondent no.1 executed a sale deed in the name of Gajanan Kashiram Shelke and accepted consideration of Rs.40,000/- from him. Complainant alleged that sale deed is a false and fabricated document and due to the act of accused he became landless and also lost the source of his livelihood. He, therefore, filed private complaint in the Court alleging commission of offences punishable under Sections 420, 463,464 r/w 34 of the Indian Penal Code.

4] The learned Magistrate issued the process. In pursuance to the issuance of process, accused appeared before the Court. Charge was framed. He pleaded not guilty and claimed to be tried.

5] Considering the evidence of complainant and his witnesses, Trial Court came to the conclusion that charge was not established against accused and so accused was acquitted. Being aggrieved, complainant seeks leave to appeal against the order of acquittal.

6] It is apparent from the record that complainant produced number of relevant documents vide lists Exhs. 3 and 98. Those documents included crucial sale deed and hand writing expert's report. Complainant did not examine competent witnesses to prove those documents. In a case in which forgery is alleged it was incumbent on complainant to bring on record expert's evidence. Complainant in his own wisdom did not examine the material

witnesses.

7] It further appears that civil suit was filed between the parties in respect of the disputed sale deed. In the said civil suit, Court came to the conclusion that sale deed bears thumb impression of complainant Uttam and the said sale deed was not illegal as alleged. The finding recorded by Civil Court negatives the allegations of forgery.

8] In these circumstances, reasonings recorded by the Trial Court cannot be said to be perverse. No interference is warranted. Hence the following order.

ORDER

Criminal Application No.2379 of 2013 stands dismissed.

[INDIRA K.JAIN, J.]

dbm/crap2379.13