

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

Criminal Revision Application No. 387 of 2003

District : Ahmednagar

Sharda d/o. Shahurao Waghmare,
Age : 40 years,
Occupation : Household,
R/o. Heritage Apartment,
Station Road, Ahmednagar,
District Ahmednagar.

.. Applicant
(Original plaintiff)

versus

1. Bhanudas s/o. Laxman Karale,
Age : 49 years,
Occupation : Agriculture.
 2. Machhindra s/o. Laxman Karale,
Age : 41 years,
Occupation : Agriculture.
 3. Babasaheb @ Balasaheb s/o.
Bhanudas Karale,
Age : 23 years,
Occupation : Agriculture.
- All R/o. Newasa Phata,
Taluka Newasa,
District Ahmednagar.
4. The State of Maharashtra.

.. Non-applicants
(Nos.1 to 3 -
Original accused)

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Mr. Ameya N. Sabnis, Advocate, for the applicant.

*Mr. V.R. Dhorde, Advocate, instructed by
Mr. R.N. Dhorde, Senior Advocate, for non-applicant
nos.01 to 03.*

*Mr. K.S. Hoke Patil, Addl. Public Prosecutor, for
non-applicant no.04.*

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CORAM : Z.A. HAQ, J.

DATE : 07TH DECEMBER 2016

ORAL JUDGMENT :

Heard learned Advocates for the respective parties.

02. The applicant filed complaint against non-applicant nos.01 to 03 alleging that the non-applicants cheated her by inducing her to execute sale deed in respect of 20 Gunthas of agricultural land and not paying the amount of consideration i.e. Rs. 27,000/-. The learned Magistrate considered the material placed on record by the applicant and passed an order on 03rd March, 2001 directing issuance of process against the non-applicant nos.01 to 03 for offence punishable under Section 420 read with Section 34 of Indian Penal Code.

The non-applicant nos.01 to 03 filed an application (Exhibit No. 38) praying that the order directing issuance of process be recalled. This application was rejected by the learned Magistrate by the order passed on 20th January, 2003.

Being aggrieved in the matter, the non-applicant nos.01 to 03 filed Revision Application before

Sessions Court which is allowed by the impugned judgment. The Sessions Court has set aside the order passed by the learned Magistrate and has dismissed the complaint filed by the applicant. The applicant has challenged this order in the Revision Application.

03. The submission on behalf of the applicant is that the learned Addl. Sessions Judge has committed an error in dismissing the complaint filed by the applicant, on the ground that the dispute is of a civil nature and the applicant cannot file and maintain the complaint for offence punishable under Section 420 of the Indian Penal Code.

04. In support of the above two submissions, the learned Advocate for the applicant has relied on the following judgments :-

[1] Judgment given by the Hon'ble Supreme Court in the case of **A.R. Antulay Vs. Ramdas Srinivas Nayak & another**, reported in (1984) 2 SCC 500.

[2] Judgment given by this Court at Nagpur Bench in the case of **Shriram Krishnappa Asegaonkar Vs. State of Maharashtra & another**, reported in 1986 Mh.L.J. 1004.

[3] Judgment given by the Andhra Pradesh High Court in the case of **Polavarapu Jagadiswara Rao Vs. Kondapaturi Venkateswarlu & another**, reported in

1991 Cr.L.J. 1419.

[4] Judgment given by the Hon'ble Supreme Court in the case of **Indian Oil Corporation Vs. NEPC India Ltd. & others**, reported in (2006) 6 SCC 736.

[5] Judgment given by the Hon'ble Supreme Court in the case of **V.R. Dalal & others Vs. Yougendra Naranji Thakkar & another**, reported in (2008) 15 SCC 625.

It is submitted that the Court, at this stage is required to consider whether there is prima facie case against the accused on the basis of which the non-applicant nos.01 to 03 can be prosecuted and the Magistrate, after appreciating the material on record, was satisfied that the applicant had brought on record sufficient evidence on the basis of which the non-applicant nos.01 to 03 are required to be prosecuted. It is argued that the learned Addl. Sessions Judge has committed an error of jurisdiction by dismissing the complaint of the applicant on untenable grounds and, therefore, the impugned judgment is required to be set aside.

05. The learned Advocate for the non-applicant nos.01 to 03 has referred to the copy of the judgment passed in Regular Civil Suit No. 404/2000 and has submitted that the findings recorded by the Civil Court in the judgment falsify the claim of the applicant that she is deceived by the non-applicant

nos.01 to 03 and the sale deed is got executed fraudulently. It is submitted that the claim of the applicant is *per se* false as the sale deed is not executed by the applicant but it is executed by Dipak Shahurao Waghmare (brother of the applicant) and the applicant is signatory to the sale deed only as a witness. It is submitted that the sale deed contains an averment that the amount of consideration is received by the vendor i.e. Dipak Shahurao Waghmare (brother of the applicant) and there is no complaint from the vendor Dipak Shahurao Waghmare that the amount of consideration is not paid by the non-applicant nos.01 to 03. It is submitted that the applicant has not examined Dipak Shahurao Waghmare to substantiate her contention that the amount of consideration is not paid by the non-applicant nos.01 to 03. It is argued that in these facts the complaint filed by the applicant was not maintainable and it is rightly dismissed by the Sessions Court. To support the argument, the learned Advocate for the non-applicant nos.01 to 03 has relied on the judgment given in the case of ***S.N. Palanikar & others Vs. State of Bihar & another***, reported in ***AIR 2001 SC 2960***.

06. After examining the documents placed on the record of the Revision Application, I find that the sale deed in question is executed by Dipak Shahurao Waghmare and it is signed by the applicant as a witness. There is nothing on record to show that the

applicant executed the sale deed in question. The sale deed contains an averment that the amount of consideration is received. It is unexplained why Dipak Shahurao Waghmare is not examined by the applicant to substantiate her contention that the amount of consideration is not paid by the non-applicant nos.01 to 03.

07. The complaint is filed by the applicant on the premise that the property which is sold by the sale deed dated 18th December, 1998 was ancestral property. Sau. Sadhana Kishor Misal (sister of the applicant) had filed Regular Civil Suit No. 404/2000 seeking decree for partition, separate possession, declaration and injunction, which is dismissed by the Court by judgment given on 01st December, 2005. The applicant has not placed anything on record to show that she has challenged the judgment and decree passed in Regular Civil Suit No. 404/2000 or has filed separate Suit praying for decree for partition and possession and other reliefs.

08. In the judgment given by the Hon'ble Supreme Court in the case of **S.N. Palanitkar & others** (*supra*), it is laid down that unless the ingredients of offence of cheating are prima facie made out in the complaint, there cannot be an order of issuance of process for the offence. In paragraph No.10 of the judgment, the ingredients of the offence of cheating

are discussed as follows :-

" The ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property. "

Considering the proposition laid down in the above judgment, and as the necessary ingredients discussed in Clause (ii)(a) above, are not satisfied, inasmuch the sale deed is not executed by the applicant but is executed by her brother Dipak Shahurao Waghmare and as the applicant has not even pleaded that she is induced to deliver the property to the non-applicant nos.01 to 03 by deception, in my view, the order directing issuance of process against the non-applicant nos.01 to 03 for offence punishable under Section 420 of Indian Penal Code could not have been passed.

09. I do not find any illegality in the judgment

passed by the Sessions Court.

The Revision Application is dismissed. In the circumstances, the parties to bear their own costs.

(Z.A. HAQ)
JUDGE

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