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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 983 OF 2015

Mallikarjun Chanbasappa Malsidhavaru	..Applicant.
Vs	
State of Maharashtra & Ors	..Respondents.

Mr Milind Deshpande for the applicant.
Smt. R.V. Newton, APP for the State.
Mr Pradiprao S. Rajepandhare for the respondent no.3.

CORAM : A.S.GADKARI, J.
DATE : 5th May, 2016

P.C.

1) By the present application under section 482 of Cr.P.C., the applicant has challenged the order dated 20.7.2015 passed in Revision Application No. 38 of 2015 by the learned Additional Sessions Judge, Solapur, confirming the order dated 14.3.2014 passed by the Judicial Magistrate, First Class, Court No.2, Solapur below Exhibit 1 in RCC No. 211 of 2001, ordered to frame charge, against the applicant and other co-accused for the offence punishable under section 420 read with section 34 of the IPC.

2) The applicant is the original accused no.1 in RCC No.211 of 2011. The respondent No.2 lodged a private complaint before the Judicial Magistrate, First Class, Solapur bearing No.211 of 2001 alleging that the accused persons i.e. the respondent no.1 and the co-accused have committed an offence as contemplated under section 420, 380 read with

section 34 of the IPC. The learned Magistrate by its Order dated 9.7.2001 sent the said complaint to the police for investigation under section 156 (3) of Cr.P.C. The Police submitted its report dated 23.1.2002 before the Magistrate stating that no offence as contemplated under Section 420, 380 read with section 34 of the IPC was made out and according to the police the transaction involved in the said complaint was of a civil nature. The learned Magistrate after receipt of the said report rejected the same and issued process by its order dated 18.4.2012. The present case being warrant triable case by Magistrate the learned Magistrate recorded the evidence before charge, of the wife of the original complainant i.e. Smt. Shantabai Gurulingappa Javalkote as contemplated under Section 244 of the Code of Criminal Procedure. The learned Trial Court after recording the evidence of the wife of the complainant reached to the conclusion that a reasonable ground for presuming that the accused have committed an offence which the said Court was competent to try and therefore, passed the order directing that the charge be framed against the accused for the offence under Section 420 read with 34 of the Indian Penal Code.

3) The applicant thereafter preferred Criminal Revision Application No. 38 of 2015 in the Court of Additional Sessions Judge, Sholapur. The Revisional Court by its Judgment and Order dated 20.7.2015 dismissed the said revision. The present application under section 482 of the Cr.P.C

is preferred by the applicant, impugning the order of framing of charge.

4) Heard the learned counsel for the applicant at length and also perused the record annexed to the application.

5) A bare perusal of the complaint lodged by the complainant/respondent no.2 discloses that the applicant herein has sold the plot involved in the complaint to one Shri Shrikant Hakke without the consent of the complainant in the year 1998. The said transaction was effected by the applicant without the knowledge of complainant and by committing deceit on him. As the police did not take cognizance of the complaint lodged by the complainant, he was constrained to file the present complaint under section 200 of Cr.P.C., before the learned Magistrate. A bare perusal of the complaint and the evidence of the wife of the complainant Smt. Shantabai Jawalkote clearly makes out a strong prima facie case as contemplated under section 420 read with section 34 of the IPC. A useful reference at this stage can be made to a decision of the Supreme Court in the case of R.S.Nayak Vs. A.R. Antulay & Anr. reported in AIR 1986 SC 2045. The Hon'ble Supreme Court has held that, the stage for discharge under section 244 of Cr.P.C. is reached only after the evidence referred to in section 245 has been taken. That there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under section 245 (1) of Cr.P.C is preliminary one and the test of "prima facie" case has to be applied. It

is further held that the legal position is that if the Trial Court is satisfied that the prima facie case is made out, charge has to be framed.

6) In view of the aforesaid ratio, after taking into consideration the facts of the present case, I am of the considered opinion that a strong prima facie case to frame charge against the applicant under section 420 read with section 34 of the IPC has been made out. For the afore stated reasons, in my view, the orders dated 14.3.2014 passed by the learned Judicial Magistrate, First Class, below Exh.1 in RCC No. 211 of 2001 and dated 20.7.2015 in Criminal Revision Application No. 38 of 2015 passed by the Additional Sessions Judge, Solapur does not require any interference by this Court. The Application being devoid of any merits is accordingly dismissed.

(A.S. GADKARI, J.)