

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 93 OF 2014

Amrutlal Himmatmal Jain. ... Applicant.

Versus

Madhukar Narayan Shahane & ors. ... Respondents.

Mr. Darshit K. Jain a/w. Ms. Shweta Solanki, advocate for Applicant.

Mr. Y.G. Thorat a/w. Mr. Ashok B. Tajane, advocate for respondent No. 2.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : JANUARY 20, 2016

P.C.:

1 Heard the learned Counsel for the applicant and the learned counsel for the respondent.

2 This is an application seeking leave to appeal filed by the original complainant challenging the Judgment and Order dated 19th

December, 2013 passed in R.C.C. No. 129 of 2007 thereby acquitting the accused respondents herein of the offence punishable under Section 420 of the Indian Penal Code.

3 With the consent of the learned Counsel the application is being decided finally. Such of the facts necessary for the decision of this application are as follow :

That the complainant herein had entered into an agreement with the accused in respect of the sale of the plot No. 95 and 95A situated within the limits of Pen Municipal Council. That the suit property was owned by the respondents herein. There was an agreement (Bayana Pavati) executed between the parties on 6/10/2004. That the respondent herein had allegedly accepted the amount of Rs. 11,000/- towards earnest money. The consideration for the sale of that property was Rs. 8 Lakhs. It appears that the sale transaction had not materialised. That the complainant had filed suit for specific performance, which was registered as Suit No. 20/2006. Thereafter, the applicant herein had filed a complaint before the

learned Judicial Magistrate First Class, Pen alleging therein that he had sent the notice to the defence. In reply, the respondent had denied the very existence of the agreement between the parties and hence, according to the complainant, the respondents herein never had an intention to sell the property and they had committed offence punishable under Section 420 of the Indian Penal Code. The learned Magistrate had issued direction under Section 156(3) of the Code of Criminal Procedure, 1973. The learned Magistrate had called for a report. The police machinery had produced "C" summary. However, learned Magistrate had recorded the evidence before charge and thereafter framed charge against the accused under Section 420 of the Code of Criminal Procedure, 1973.

4 According to the complainant/applicant, the respondent herein had misrepresented the complainant. They have obtained consent of Dr. Madhav Shahane and that the accused No. 1 happens to be the Karta of the family. Accused had issued receipt on obtaining earnest deposit. That by letter dated 1st April, 2005, the accused had denied

execution of bayana receipt and due to letter dated 21st March, 1995 issued by the complainant, there were disputes within the family.

5 The learned Counsel for the respondents has drawn attention of this court to cross-examination of the complainant which reads as follows:

“6. It is true to say that, in respect of the said property I have filed Spl. Suit No. 20 of 2006 before Civil Judge, Senior Division, Alibag. The said suit has been decided and the accused were order to pay the earnest money and also damages of Rs. 50,000/-. Now the certified copy of the said judgment shown to me. It is the same. It is given Exh. 84. It is true to say that, accordingly the accused have deposited the amount of Rs. 93,526/- in the court vide receipt now shown to me. The said receipt is given Ex. 85.

7. It is true to say that, after issuance of public notice vide Ex. 60 persons namely Anand Jadhav and Umakant Joshi raised objection through Adv. Deshmukh. It is true to say that, other tenants on the property of accused also raised objection through Adv. N.H. Bafna. It is true to say that, in the complaint nothing is mentioned about the said fact. It is true to say that, I do not have any evidence to show that I have discussed with the

tenants in the said premises and measured the property. It is true to say that, I have not filed proposed agreement to sale send to the accused. I am ready to furnish said copy.

8. I do not remember as to whether accused sent the cheque of Rs. 11,050/- but I have returned it to accused. It is true to say that, proposed agreement to sale was sent to accused by fax. It is true to say that, I have made two different fax for the said purpose. It is true to say that, I have not sent notice accused Nos. 1 and 2 for asking them to sale their undivided share to me. It is not true to say that, I am deposing falsely that, I have discussed with tenants in the said premises and measured the said property.”

6 The learned Counsel for the applicant submits that in fact, they had deliberately not obtained written consent from Dr. Madhav Shahane at the time of executing the agreement for the simple reason that they could deny consent from him. According to the learned Counsel for the applicant, recitals of letter dated 1/4/2005 is sufficient to infer that the accused had an intention to cheat right from inception, or else, they would not have denied the very execution of the receipt. The learned Counsel further submits that in

the statement under Section 313 of the Code of Criminal Procedure, 1973 recorded at the end of the trial, the accused had admitted that there was an agreement between the parties and that the complainant had initially filed Civil Suit, which was decreed in favour of the complainant and only to waive the period of limitation and to exercise coercion upon the accused, the complainant had filed a criminal case.

7 At the same time, the learned Counsel for the respondent submits that the recitals in the complaint would show that neither the amount agreed towards consideration is mentioned nor the amount received as earnest deposit has been mentioned in the complaint. It is also submitted that in view of this, there is discrepancy in the substantive evidence and the very complaint on the basis of which the accused were prosecuted. It is also brought to the notice of this court that the civil suit has been partly decreed. The respondent has already deposited an amount of Rs. 93,526/- in the court of Civil Judge, Sr. Division on 17/7/2009. That the applicant herein has challenged the said Judgment by filing first appeal in this Court,

which is now transferred to the District Court at Alibag. The respondents have also filed cross-objections. Learned Judge has assigned justifiable reasons for acquitting the accused for the offence punishable under Section 420 of the Indian Penal Code, which has been specifically observed that there is no sufficient evidence to infer that the accused have committed an offence punishable under Section 420 of the Indian Penal Code.

8 In view of this, the application seeking leave to appeal being sans merit stands rejected.

(SMT. SADHANA S. JADHAV,J)