IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITON NO. 4625 OF 2013

Mr. Pramod Raghupati Joshi,
Age : 69 years, Occ : Retired,
R/o. Usha Swapna Bungalow,
Lane No.10, Prabhat Road,
Pune-411 004. .....Petitioner
(Orig. Accused)

V/s.

1). The State of Maharashtra
Through Public Prosecutor,
High Court, Bombay
2). M.Anil Suresh Mundada
Age : 30 yrs, Occ : Business
Plot No. 1551/1/2A
Om Bungalow, Subhash Nagar,
Barshi-413 401, Dist-Solapur ......Respondents

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Mr. Pramod R. Joshi, petitioner-in-person.
Mr. S.V. Gajare, APP for State-respondent no.1.
Mr. Vikram Chavan, Advocate for respondent no.2.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 13TH JANUARY, 2016.

JUDGMENT :-

1). This petition filed under Article 227 of the Constitution of India and under Section 482 Criminal Procedure Code is directed against the order dated 20th November, 2013 by which the Sessions Court, Pune dismissed the petitioner's Revision Application No. 129 of 2012. The petitioner had preferred the Revision Application against the order of the trial Court dated 4th February, 2012 by which the trial Court dismissed his application for discharge in R.C.C. No. 2595 of 2009 for the offences punishable under Sections 420, 406, 467, 506 read with 34 Indian Penal Code arising out of C.R. No.8 of 2008 registered with Deccan Police Station, Pune City. The petitioner is accused no.2 and respondent no.2 is the complainant. Accused no.1 is the wife of the petitioner and accused no.3 is his sister.

2). The case of the prosecution stated in brief is as follows :_

. Respondent no.2, a resident of Barshi, desired to shift his residence to Pune for his own medical treatment and also of his father. He was introduced to the petitioner and accused no.1 by the Real Estate Broker, one Yogesh Thakkar. Accused no.1 is the owner of a two-storeyed bungalow admeasuring 2,426 sq.ft on the land admeasuring 2,820 sq.ft situate at CTS No. 38-2+3/1 having purchased the same from her mother-in-law by registered sale-deed dated 2nd December, 1991. After negotiations, agreement dated 18th June, 2005 for sale of the bungalow for the total consideration of Rs.48,51,000/- was executed by accused no.1, in favour of respondent no.2 and his wife. The petitioner, his mother and his sister, accused no.3 signed the agreement as consenting parties. By that date, respondent no.2 and his wife had paid Rs.18,51,000/- from time to time to accused no.1 which fact is noted at recital no.7 to the agreement. The balance amount of Rs.3,00,000/- was agreed to be paid in the mode provided in Clause-6 of the agreement i.e. by deposit in joint escrow account in any nationalised bank to be mutually decided by the parties. Accused no.1 was to encash/receive that amount at the time of execution of the sale-deed and on handing over vacant and peaceful possession of the property to respondent no.2 and his wife. Clause-7 provided for handing over of possession on/or before 31st August, 2005 on deposit of the amount. The defaults by either party were provided for at Clause-12. Under Clause-12(a), failure on the part of the purchasers, entailed forefeiture by the owner of the amount already paid i.e. Rs.18,51,000/- after notice in writing. Clause-12(b) provided for interest @ 15% p.a. payable by the purchasers on the overdue amounts. Same interest was payable by the owner on the amounts paid by the purchasers in the event, the owners failed to hand over possession on 31st August, 2005 and execute sale-deed by making out free and marketable title. Clause-12(d) which has been heavily relied upon by the petitioner reads as follows :-

> "12(d). In case the purchasers having deposited Rs.30,00,000/- in the said Escrow account and the owner fails to give possession and execute sale deed of the said property to and in favour of the purchasers on or before 31/08/2005, the owner will refund to the purchasers the entire amount of Rs.18,51,000/- together with interest @ 15% p.a. till payment. The owner will also pay to the purchasers additional compensation of Rs.15,00,000/- (Rupees fifteen lacs only) plus actual charges incurred by the purchasers towards stamp duty, registration charges."

3). At the relevant time, a dispute between the accused and one, Nirmiti Builders relating to the property in question was pending in a Court of law. On account of that pendency and for want of opening of the joint Escrow Account, respondent no.2 had not deposited the balance amount of Rs.30,00,000/-. Then, the accused demanded additional amount of Rs.4,50,000/- from respondent no.2 after which supplementary agreement dated 28th November, 2006 was executed under which time to handover possession was extended to 31st August, 2007. In view thereof, respondent no.2 had to incur further expenditure of Rs.2,68,755/- for payment of fees to Pune Municipal Corporation and the Architect.

4). In the month of August, 2007 joint Escrow Account was opened with Janata Sahakari Bank, Karve Road, Pune. All the formalities in respect thereof, had been completed by the petitioner by representing to respondent no.2 that he knew the bank officials personally. Respondent no.2 and his wife had merely signed the account opening form and written their address thereon and handed the same over to the petitioner who was the introducer for opening of the bank account. After the account was opened, respondent no.2 deposited Rs.30,00,000/- in it. Thereafter, until February, 2008 the accused on some pretext or the other, failed to complete the transaction. In the month of March, 2008 respondent no.2 received threatening calls in connection with the transaction. He then made enquiries with the Bank regarding the Escrow Account and learnt that the interest generated on the amount in the account was withdrawn by the accused persons by transferring the same to the joint account of the petitioner and accused no.1. Such transfer was contrary to the specific term in the agreement for sale. On further enquiry, respondent no.2 was informed by the bank that the payment of interest was made by the bank in accordance with the instructions on the account opening form.

5). Respondent no.2, thereafter filed private complaint dated 30th April, 2008 alleging offences punishable under Sections 420, 406, 467 read with 34 Indian Penal Code against the petitioner, accused no.1 and accused no.2. The learned Magistrate, by the order dated 22nd October, 2008 passed under Section 156 (3) Criminal Procedure Code, forwarded the complaint to the police for investigation and it came to be registered as C.R. No.8 of 2008. After due investigation, chargesheet was filed against all the accused for the offences punishable under Sections 420, 406, 467, 506 read with 34 Indian Penal Code.

6). The petitioner and accused no.1 had filed an application for discharge contending that, there is no *prima-facie* case made out against them. According to the petitioner, he is not the registered owner of the property in dispute. He was merely a consenting party to the agreement of sale. Accused no.3, who was similarly a consenting party to the agreement of sale, has been discharged from the proceedings. The petitioner alleged that, respondent no.2 desires to prosecute the petitioner to pressurize accused no.1 and to grab the property. It was his further contention before the Courts below, which contention has been canvassed before this Court also, that, in view of the resort by accused no.1 to default clause at Clause-12(d) of the Agreement of Sale, it cannot be said that the accused have committed the offences as alleged. Accused no.1, had by her letter dated 24th August, 2007 showed her readiness and willingness to abide by the default clause and signed cheques in the sum of Rs.18,51,000/- towards part consideration paid, Rs.1,50,313/- towards the interest on the said amount for the period 1st September, 2007 to 15th April, 2008, Rs.15,00,000/- towards compensation and Rs.3,17,000/- towards the stamp duty and registration fees paid on the Agreement of Sale. She also gave no objection for withdrawal by respondent no.2 of the amount of Rs.30,00,000/- deposited in the joint Escrow Account. Thereafter, accused no.1 had sent sent notice dated 2nd August, 2008 calling upon respondent no.2 and his wife to execute the deed of cancellation. Respondent no.2, however, refused to accept the amount and complained to the police.

7). The trial Court dismissed the application for discharge with observations that the original complaint and the police papers filed on record, *prima-facie*, disclose the offences alleged against the petitioner and accused no.1 and the offences are serious.

8). The petitioner alone carried the order of dismissal to the Sessions Court by preferring Criminal Revision Application No. 129 of 2012. The Sessions Court, by its order dated 20th November, 2013 confirmed the order of the trial Court and dismissed the revision. In addition to the observations of the trial Court, it has noted that the petitioner and accused no.1 had suppressed the fact of transfer of the interest on Rs.30,00,000/- deposited in the joint Escrow Account and that the FIR clearly reveals the fact of forging of documents and commission of fraud with intent to cheat respondent no.2 right from the inception.

9). It may be noted at this stage that, the petitioner and accused no.1 had preferred Writ Petition being Writ Petition No. 1276 of 2008 for quashing of the FIR against them. The Division Bench of this Court, rejected the petition by it's order dated 12th August, 2008 holding that no case was made out for quashing of the FIR, which discloses commission of an offence. During the hearing of the petition, the learned APP had produced a copy of the letter written by the Investigating Officer to the Director General of Police on 5th August, 2008 thereby complaining that one Mr. Prem Agarwal, Advocate claims to be the Law Officer in CID, Crime Branch, was interfering in the investigation of the case and threatening the Police Officers that he will save the accused. The Division Bench had taken a serious view of the matter and sought response from the Director General of Police, Maharashtra. Later when the Court was informed that the Director General of Police had ordered an enquiry to be conducted by the Commissioner of Police, Pune in the matter, no further direction were found necessary.

10). The first argument of the petitioner, who appears in person, is of parity with accused no.3. He argues that similar to accused no.3, he is also a mere consenting party to the agreement of sale and therefore no further role could have been attributed to him. This argument needs to be rejected for the simple reason that, there has been further role alleged against the petitioner beyond execution of the agreement of sale, which is clearly spelled out in the complaint.

11). The petitioner-in-person, next argues that, in the facts of the case, the offence of forgery and fraud in respect of the account opening form cannot be said to have been made out. The account opening form has been signed by respondent no.2 and his wife. The form gives clear instructions for transfer of the interest from the Escrow Account to the joint account of the petitioner and accused no.1. Since respondent no.2

and his wife have signed the account opening form, they cannot claim ignorance of the specific instructions. It has, however, been the specific allegation of respondent no.2 that, the petitioner had represented to him that since he already holds an Account with bank in the concerned branch, it was easy and convenient for him to take all the steps regarding the procedure for opening of the Account and respondent no.2 and his wife were required to only sign the account opening form. Respondent no.2, has further alleged that the blank account opening form had been sent to him for signatures. He and his wife signed the blank form and he wrote their residential address in the concerned column. Thereafter, the form was completed by the petitioner himself and the bank account opened. It is his allegation that, transfer of interest was neither in accordance with agreement between the parties nor any intimation was given to him and his wife of the transfer of interest from the Escrow Account to the account of petitioner and his wife. In view of these specific allegations, it cannot be said that, on a *prima-facie* view of the matter, there is no material on record to proceed against the petitioner. Therefore, the trial Court, as well as, the Sessions Court have correctly rejected the application of the petitioner for discharge.

12). The petitioner's claim of innocence has been a subject matter of judicial scrutiny by different Courts in the several proceedings filed by him and accused no.1. A reference is already made hereinabove to the Writ Petition filed by both for quashing of the FIR which petition was dismissed holding that there is sufficient material on record to prosecute the petitioner and accused no.1. Then, after failing to get anticipatory bail from the Sessions Court, the petitioner and accused no.1, had approached this Court for that relief by filing Criminal Application No. 2771 of 2008. This application was dismissed by the order dated 22nd August, 2008 clearly spelling out the role of the petitioner in the offence alleged. The relevant para-5 of the order reads as under :-

> "As far as applicant no.2 is concerned, it is seen that he was instrumental in transferring the interest accrued on Rs.30 lakhs which was deposited in the bank on 11.8.2007. The learned APP has placed reliance on the account opening form and the statement of the Manager of the Bank to show that written instructions were given by applicant no.2 to transfer the interest accrued on Rs.30 lakhs, to the Savings Bank Account of applicant no.1. Clause 2 of the Agreement dated 28.11.2006 provides that the owner shall be entitled to withdraw the amount of Rs.30 lakhs along with interest at the time of execution of the sale deed and hand over vacant and peaceful possession of the property to the purchaser i.e. the complainant. Despite this clause in the agreement, the interest accrued was transferred at the behest of applicant no.2 to the Savings Bank Account of applicant no.1. This was done without consent of the complainant."

. The petitioner and accused no.1 had then sought time till 28th August, 2008 to surrender, which time was granted by the order to them. The petitioner utilised that time to approach the Apex Court with Special Leave to Appeal (Criminal) No. 6415 of 2008. The Apex Court, declined to exercise its discretionary and equitable jurisdiction under Article 136 of the Constitution of India, in view of the admitted fact that the petitioner and accused no.1 had not surrendered as per the statement made by them before this Court.

13). Apart from filing several proceedings in the courts of law, the petitioner and accused no.1 had also indulged in obstructing the investigation at every possible opportunity. They had made allegations of harassment against the police officers investigating into the complaint of respondent no.2. The mother of the petitioner died on 19th May, 2008. Her death was sought to be attributed to the harassment during investigation. Then, at the instance of the Commissioner of Police, Pune City enquiry was conducted into the complaint during which statements of 15 witnesses were recorded and 54 documents were got produced. In enquiry, the allegations were found to be baseless. The chargesheet filed on 13th June, 2009 is thus yet to proceed for trial.

14). In all the above circumstances, the petition is dismissed, with costs. The petitioner shall pay costs quantified at Rs.1,00,000/- (Rs. One Lakh only) to respondent no.2.

(SMT. R.P. SONDURBALDOTA, J)