

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

Criminal Revision Application No. 247 of 2004

Housabai w/o Digambar Kanse,
Age 35 years,
Occupation: Agriculture & Household,
R/o Nehru Nagar, Kabad Galli, Beed,
Taluka and District Beed. **.. Applicant.**

Versus

Jagdish s/o Eknath Charkha,
Age 37 years,
Occupation: Private Service with
Dwarkadas Mantri Urban Cooperative
Bank Ltd., Beed,
R/o Hiralal Chowk, Beed,
Taluka and District Beed. **.. Respondent.**

Shri. G.A. Kulkarni, Advocate, holding for Shri. R.S.
Deshmukh, Advocate, for applicant.

CORAM: T.V. NALAWADE, J.

DATE : 11 JANUARY 2017

ORAL JUDGMENT:

1) The proceeding is filed to challenge the order made by the learned Chief Judicial Magistrate Beed on Exhibit 1 in R.C.C. No.248/2002. Learned Chief Judicial Magistrate Beed has discharged the respondent Jagdish of

the offences punishable under sections 420, 467, 468, 34 of Indian Penal Code. Heard learned counsel for the applicant. Nobody is present for the respondent accused today and even on the last date also nobody was present.

2) Though there could be point of propriety of filing revision directly in this Court, as the petition is admitted by the then Hon'ble Judge this Court is deciding the matter on merits.

3) Private complaint was filed by present petitioner against respondent Jagdish. She has made allegation that under sale deed dated 5-5-1988 Jagdish sold her plot No.11 from Survey No.62 of Wasanwadi, Tahsil Beed when this plot was already sold by accused to person like Prabhakar Sarvade on 21-5-1987. The complainant realised about this deceit when she filed Regular Civil suit No.439/2001 against accused Jagdish, Prabhakar and Rameshwar. As Prabhakar and Rameshwar were interfering in her possession she had filed the suit for injunction.

4) In the said suit accused Jagdish filed written statement and he admitted that he had sold the suit property to the defendants. There is copy of written statement filed by defendant No.3 Rameshwar and it shows that he had purchased the suit plot from present accused under sale deed dated 11-5-1987 and then he sold the plot to accused No.2 under sale deed dated 22-5-1988. He contended that there was no title with accused No.1 Jagdish for execution of sale deed in favour of the plaintiff on 5-5-1988. In view of this contention, after verifying the facts and collecting copy of sale deed, private complaint was filed. Order of issue process was made and then evidence before charge was given.

5) Learned Judge of the trial Court has discharged respondent Jagdish by observing that civil suit is pending. It is observed that in the civil suit accused has contended that he had not executed out and out sale document in favour of other defendant and it was nominal transaction and so he has not deceived the plaintiff. Learned Judge has also observed that the possession was shown to be given to the plaintiff and so there was no cheating.

6) The aforesaid reasoning is not at all convincing and it cannot be accepted at least at the stage of framing of charge. When the purchaser of the year 1987 has specifically contended that possession was given to him of the suit property and it was out and out sale transaction, it was necessary for the learned Chief Judicial Magistrate to go with presumption that there was no title left with Jagdish and so by executing the sale deed in favour of the plaintiff and by accepting consideration for the sale deed, he has deceived. Thus, there was sufficient material for framing of charge but learned Chief Judicial Magistrate has discharged the accused. Such decision cannot sustain in law.

7) In the result, the application is allowed. The order made by the learned Chief Judicial Magistrate is hereby quashed and set aside and the matter is restored at the same stage before the Chief Judicial Magistrate. In view of the aforesaid observations, further steps are to be taken by the Chief Judicial Magistrate. Rule made absolute in aforesaid terms.