

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4390 OF 2016

SURENDRA SHIVSHANKER CHAUDHARI)...PETITIONER

V/s.

**VISHWANATH SHIVSHANKER CHAUDHARI)
AND ANR.)...RESPONDENTS**

Mr.V.J.Bhanushali, Advocate for the Petitioner.

Vishwanath Shivshanker Chaudhari – Respondent No.1 –
appearing in person.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 22nd SEPTEMBER 2017

P.C. :

1 By this petition, the petitioner / accused in Criminal
Case No.307/SW/2014 is praying for quashing the proceedings
initiated by respondent no.1 herein, who is the original
complainant before the learned Magistrate.

2 Heard the learned advocate appearing for the petitioner / accused at sufficient length of time. He took me through the averments made in the complaint lodged by respondent no.1 / original complainant, order of issuance of process passed by the learned Magistrate as well as the report submitted by police under Section 202 of the Code of Criminal Procedure (Cr.P.C.). Reliance is also placed on registered agreement in respect of purchase of land and receipts in the name of the petitioner / accused. By drawing my attention to the letter dated 29th January 2014 sent by respondent no.1 / original complainant, the learned advocate for the petitioner / accused argued that this letter is as vague as it can be and it is not mentioning the amount allegedly paid by respondent no.1 / original complainant to the petitioner / accused. The same is countered by reply dated 5th February 2014 with a contention that the land was purchased by the petitioner / accused from his own resources and the same is sold as per wish of the petitioner / accused. The learned advocate further argued that in such type of cases, initially oral agreement is required to be proved in a civil

suit and then only a complaint can be lodged. Reliance is also placed on Section 19 of the Evidence Act. It is further argued that delivery of money is not proved and no offence punishable under Section 420 of the IPC is reflected.

3 I have also heard the learned APP as well as the respondent no.1 / original complainant.

4 I have carefully considered the rival submissions and also perused the entire material placed on record.

5 A complaint alleging offence punishable under Section 406, 409 and 420 of the IPC came to be lodged by respondent no.1 / original complainant against the petitioner / accused. They are real brothers. Respondent no.1 / original complainant alleged in his complaint that on advise of the petitioner / accused, he paid amount to the petitioner / accused for purchasing land at Village Narivali. It is further averred in the complaint that apart from Rs.50,000/- for purchasing land, further amount of Rs.4 Lakh was

also paid by respondent no.1 / original complainant to the petitioner / accused from the year 1986 to year 2007. The land was purchased in the name of the petitioner / accused as it was represented to respondent no.1 / original complainant that if purchased in the name of the petitioner / accused, it will cost only 50% of the market value of the land. On this representation, respondent no.1 / original complainant allowed the land to be purchased in the name of his younger brother i.e. the petitioner / accused. It is further averred in the complaint that in September 2013, respondent no.1 / original complainant came to know that the land in question was sold to M/s.Lodha Dwellers Private Limited without even informing respondent no.1 / original complainant. This is how respondent no.1 / original complainant is alleging commission of alleged offence.

6 It is seen that the learned Metropolitan Magistrate has sought for report of the concerned police station in exercise of powers under Section 202 of the Cr.P.C. Perusal of that report goes to show that police examined three witnesses namely Lalitkumar

Maheshwari, Deepak Chaudhari and Vinodkumar Bubna. Police has reported that witnesses are stating that respondent no.1 / original complainant had paid money to the petitioner / accused for purchase of land in installments. Police has further reported that there is no documentary evidence on this aspect.

7 Section 420 of the IPC deals with punishment for the offence of cheating. For establishing this offence, intention of cheating the victim since inception is required to be proved. Section 3 of the Evidence Act deals with definition of the term “proof”. In a criminal trial, proof beyond reasonable doubt is expected. There is no provision in law which compels the complainant to prove his case only by documentary evidence. A case can be proved even by oral evidence. In the case in hand, the complaint itself demonstrates that the entire transaction took place orally. In this view of the matter, non-availability of documentary evidence cannot be given an overbearing importance.

8 The learned advocate for the petitioner / accused relied on judgment of the Hon'ble Apex Court in the matter of **State of Haryana & Others vs. Ch. Bhajan Lal and Others**¹. The Hon'ble Apex Court has given illustrations wherein powers conferred to this court under Section 482 of the Cr.P.C. need to be exercised and further cautioned that such powers are to be exercised sparingly and that too in rarest of rare cases. Following are the eventualities :

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

1 1992 CRI.L.J. 527

(c) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9 The learned advocate appearing for the petitioner / accused submits that criminal proceedings are manifestly attended with malafides and are instituted maliciously with an ulterior motive for wrecking vengeance. There is nothing on record to suggest that there is an element of malice in instituting the proceedings. Respondent no.1 / original complainant has lodged his case before the learned Magistrate for the alleged offence and ultimately process for the offence punishable under Section 420 of the IPC is issued, considering the police report as well as verification statement vis-a-vis averments made in the complaint.

10 At the inception, the court is not required to see whether the case will ultimately result in conviction. The

requirement is whether there are sufficient grounds to proceed against the accused. On this aspect, Section 204 of the Cr.P.C. is relevant. Considering averments made in the complaint as well as statement of witnesses recorded by police during inquiry under Section 202 of the Cr.P.C., it cannot be said that there are no grounds for proceeding against the petitioner / accused.

11 Reliance is also placed on judgment of the Hon'ble Apex Court in the matter of Nageshwar Prasad Singh alias Sinha vs. Narayan Singh and Another². Facts of that case are totally different. In that matter, there was an agreement for sale and ultimately the suit for specific performance of contract was required to be filed. In that backdrop, Hon'ble Apex Court has held that no case for taking cognizance of the offence punishable under Section 420 is made out. Such is not the case in hand.

12 In the result, the petition is devoid of merits and therefore the order :

² (1998) 5 Supreme Court Cases 694

ORDER

The petition is dismissed.

(A. M. BADAR, J.)