

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 420 OF 2014

- 1) Zumberlal S/o Dhondulal Jain (Chajed)
Age 53 Years, Occ. Business,
R/o at Post Raniche Bambrood,
Tq. Pachora, Dist. Jalgaon.
- 2) Anilkumar S/o Hiralal Bohara,
Age 47 years, Occ. Business,
R/o. Jamner, Tq. Jamner, Dist. Jalgaon.
- 3) Punamchand S/o. Dhondulal Jain (Chajed),
Age 50 years, Occ. Business,
R/o Jaihind Colony, Bhadgaon,
Tq. Bhadgaon, Dist. Jalgaon.
- 4) Sanjay S/o Suganchand Jain,
Age 40, Occ. Business,
R/o At Post Raniche Bambrood,
Tq. Pachora, Dist. Jalgaon.

... APPLICANTS

VERSUS

- 1) Laxman S/o Dhoman Mahajan,
Age 68 years, Occ. Business,
R/o. Anandnagar, Near Shivneri Gate,
Bhadgaon, Ta. Bhadgaon, Dist. Jalgaon.
- 2) The State of Maharashtra,
Through Police Inspector,
Bhadgaon Police Station,
Tq. Bhadgaon, Dist. Jalgaon.

... RESPONDENTS

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Mr. B. R. Warma, Advocate for Applicants.

Mr. Girish Rane, h/f Mr. S. P. Tiwari, Advocate for Respondent No.1.

Mr. R. V. Dasalkar, APP for Respondent No.2 / State.

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CORAM : **T. V. NALAWADE &
K. L. WADANE, JJ.**

RESERVED ON : 31st July, 2018.

PRONOUNCED ON : 02nd August, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of FIR No.15 of 2014, registered with Bhadgaon Police Station, District Jalgaon, for the offences punishable under Sections 420, 120(B), 406 and 34 of the Indian Penal Code. The offence is registered on the basis of order of investigation made by the Judicial Magistrate First Class, Bhadgaon in Criminal Miscellaneous Application No.126 of 2013.

2 Both the sides are heard.

3 The dispute is in respect of one plot, which was to be sold to first informant by the Applicants. The Applicants Jain alias Chajed

were the owners of land Gat No.302/3B and 302/7/3 situated at village Mhasve, Tahsil Parola, District Jalgaon. They prepared 83 plots of different area and they advertized for sale of those plots. The Respondent approached the Applicants for purchasing one plot. As per the scheme and agreement, the booking amount was paid by the Respondent and he started paying the monthly installments. He was to pay 40 installments of Rs.500/- each for getting plot No.56. It is the contention of the first informant that he had paid most of the installments and the Applicants had given receipts in respect of many installments and they had made entries in the notebook of the first informant to show that some installments were paid, but receipts were not passed. It is contended that the receipt book was not available when the amount was tendered and so such receipts in writing were given in the notebook of the first informant. The submissions made by the learned counsel for Applicants show that last installment was to be paid before December 2001.

4 It is the contention of the first informant that even when most of the installments were paid by him and he had period till December 2001, the Applicants sold plot No.56 on 8th September,

2000 and thereby they cheated the first informant. It is contended that even after selling of this plot, some installments were accepted and this circumstance shows that there was intention to cheat.

5 In view of the nature of dispute, this Court had asked the Applicants to produce the registers of the scheme. It is not disputed that the purchaser of plot No.56 shown by the Applicants had not booked the plot. Plot No.56 was sold to the person, who had not booked the plot. The name of first informant is there in the register at serial No.61 and name of Punamchand Dhondulal Chajed, the purchaser is not there. As against Ashishkumar Punamchand the date of sale is shown in the register as 23rd December, 2003. Thus, as per the record, one plot was sold to Ashishkumar Punamchand relative of Applicant No.3 on 23rd December, 2003 and it must be different plot than plot No.56, which is shown to be sold to Punamchand Dhondulal Chajed on 8th September, 2000. The consideration amount paid by Punamchand is shown as Rs.6,000/- and the area of 114.31 square meters is shown to be sold out of plot No.56. Mutation dated 1st May, 2003 shows that under sale-deed dated 19th April, 2003, area admeasuring 228.63 square meters of plot

No.56 was sold alongwith plot Nos.51 and 50 by the power of attorney holder of Anil Bhandari, Prakash Bhandari and Punamchand Chajed. These entries are definitely against the Applicants. The register further shows that, to other members, the plots were sold even in July 2004. This circumstance supports the allegations of the first informant that there was intention to cheat right from the beginning and even when most of the amount was paid by the first informant and the period given was still there, his plot was sold by he Applicants. This material is more than sufficient to make out a *prima-facie* case of cheating.

6 The learned counsel for Applicants placed reliance on some observations made by the Apex Court in the cases reported as **AIR 2001 Supreme Court 3014, (M. Krishnan Vs. Vijay Singh and another)** and **2015 AIR (SC) 2501, (Savitri Pandey and another Vs. State of Uttar Pradesh and others)**. The observations made by the Apex Court are with regard to ingredients of the offence of cheating. It was submitted that if at all dispute is there it is of civil nature and criminal action cannot be used for enforcing civil right. There cannot be dispute over the proposition that criminal action cannot be allowed

to enforce to civil right. However, it needs to be kept in mind that when there is agreement, the agreement does not create any interest in the property and this legal position is misused many times by the owners. It was submitted that even the amount shown to be paid by the first informant to the Applicants cannot be recovered due to law of limitation. Initially, the submission was made by the learned counsel for Applicants that the amount was already returned. This Court had directed the learned counsel for Applicants to show the record of return of amount. No such record is produced. Even for the present purpose, it can be observed that when such amounts are given, the amount needs to be treated as deposit amount, if there was some conditions for performing the promise. No right can be said to be vested in the promisor to forfeit such amount on the ground that there was a term of forfeiture in the agreement. Considering the dates of transactions made with other persons, this Court holds that inference is easy that till the last date fixed in the agreement, amount was to be paid and then the transaction was to be completed. When before the fixed date, the plot was sold to third party and there is record of aforesaid nature, inference is possible for making out *prima-facie* case that there was intention to deceive. This Court holds that

no relief can be granted to the Applicants. In the result, the following order is passed:

ORDER

- I. The application is dismissed.
- II. Interim relief is vacated.
- III. Rule is discharged.

[K. L. WADANE, J.]

[T. V. NALAWADE, J.]

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