

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

CRIMINAL APPLICATION NO. 308 OF 2018

1. Sunil Baburao Kapratwar,
Age 42 years, Occ. Business,
R/o. Line Galli, Degloor,
District Nanded.
2. Sulbha Narayan Dachawar,
Age 46 years, Occ. Service,
R/o. Shivajinagar, Nanded.
3. Nikhil Narayan Dachawar,
Age 25 years, Occ. Education,
R/o. As above.
4. Narayan Laxman Dachawar,
Age 53 years, Occ. Service,
R/o. As above.

... Applicants
(Ori. accused No. 3
to 6)

VERSUS

1. The State of Maharashtra. **... Respondents**
2. Pradeep Pandurang Yerawar,
Age 50 years, Occ. Business,
R/o. Etwara Bazaar, Nanded,
Dist. Nanded....Orig. Complainant

...

Advocate for Applicants : Mr. V.V. Bhavthankar.
APP for respondent No. 1/State : Mr. P.G. Borade.

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

DATE : 12th June, 2018.

JUDGMENT (PER K.L. WADANE, J)

1. Rule. Rule made returnable forthwith. With the consent of the parties, this application is taken up for final hearing.

2. The original accused No. 3 to 6 (applicants No. 1 to 4) have challenged first information report bearing Crime No. 26/2011 of police station Itwara Nanded and charge-sheet bearing RCC No. 76/2012, pending on the file of II Judicial Magistrate, First Class, Nanded, for the offences punishable under section 420, 467, 468, 471, 504, 506 read with section 34 of the Indian Penal Code.

3. The brief facts of the case may be stated as follows:

(i) The respondent no. 2 (original complainant) lodged a private complaint against the applicants No. 1 to 4 (i.e. accused No. 3 to 6) and other two accused persons namely Dnyaneshwar and Namdeo, for the offences as referred above.

(ii) Complainant alleged that the accused persons have started a scheme of plotting in suitable installments under a banner of Shrinivas Colony. He further alleged that accused No. 6 i.e. applicant No. 4

was representing accused No. 1 to 4 and he used to accept the membership fees of Rs. 25/- and deposit of Rs. 5000/-. He further alleged that, accused No. 6 (present applicant No. 4) has accepted 40 installments of Rs. 1500/- per month and agreed to sale plot No. 101 to the complainant, as he has accepted the membership fees as well as the entire amount of installments, from the complainant. It is further alleged that the accused persons were to complete this scheme before 18.04.2008. He further alleged that there was dispute amongst the members and lay-out plan, which was changed.

(iii) It is further alleged that the accused persons sold the plot no. 101 to accused No. 6 instead of selling it to the respondent No.2/original complainant. They assured the respondent No. 2/complainant to give another plot, however, same was not given, hence complaint of cheating is filed.

4. We have heard the arguments of Mr. V.V. Bhavthankar, learned counsel for the applicants and Mr. P.G. Borade learned APP for the respondent No.1/State and also perused the documents on record. On perusal of the same and looking to the allegations against the accused persons made by the complainant in the first

information report as well as in the complaint and even accepting the contention in the complaint as well as in the first information report are to be true, it appears that the dispute between the parties is of civil nature, for which the original complainant can very well avail the remedy available in law. Not only this, on perusal of the further record it appears that there was compromise between the respondent no. 2/original complainant and the present applicants in reference to the execution of the sale-deed in favour of respondent No. 2/original complainant regarding plot No. 101. On perusal of the contents of the compromise between the parties it appears that the respondent No. 2 had paid 32 installments of total amount of Rs. 48,000/-, due to which the present applicants and other accused No. 1 and 2 have not executed the sale-deed in favour of the respondent No. 2.

5. It further appears from the record that the applicants No. 1 and 2 and original accused No. 1 and 2 in order to settle the dispute have executed sale-deed in favour of applicant No. 4 i.e. accused No. 6 regarding plot No. 101, due to which the complainant has filed a private complaint, as referred above. It was further settled between the parties that the

applicant No. 4 Narayan has to execute a sale-deed in favour of complainant regarding plot No. 101 and it was resolved between parties that the respondent No. 2/original complainant has to withdraw the complaint.

6. From the sale-deed dated 28.03.2011 it is seen that the applicant No. 4 has executed a sale-deed of plot No. 101 in favour of respondent No. 2/original complainant. Therefore, in fact, as per the agreement the accused persons through the applicant No. 4 have executed the sale-deed in favour of respondent No. 2/original complainant. Therefore, no dispute between the parties remains in respect of the alleged transaction.

7. In the present case, looking to the allegations in the complaint on the face of it, we find no allegations are made attracting the ingredients of section 420, 467, 468, 471 of the Indian Penal Code, there are no allegations as to cheating or the dishonest intention of the applicants to have a wrongful gain to themselves or causing wrongful loss to the complainant. Even if, all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest intention and misappropriation are missing. Criminal

proceedings are not a short cut for the other remedies. There is no criminal breach of trust or dishonest intention of inducement is made out. The essential ingredient of section 420 of the Indian Penal Code are missing. There is also no evidence to show that the accused persons have fabricated any document in order to cheat the complainant.

8. In view of the above, the application is therefore liable to be allowed. Hence, following order is passed.

ORDER

1 The application is allowed.

2 Relief is granted in terms of prayer clause 'B'.

9. Rule made absolute in aforesaid terms.

(K. L. WADANE, J.)

(T.V. NALAWADE, J.)

mkd