

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

CRIMINAL WRIT PETITION NO.337 OF 2018

Abdul Razzak Maniyar,
Age : 56 years, Occ. Business,
r/o. Galli No.3, Gouspura,
Latur

..Applicant

Vs.

1. The State of Maharashtra,
Through : The Secretary,
Home Department,
Mantralaya, Mumbai- 32

2. Mohammad Kamil Maniyar,
Age : 38 years, Occ. Business,
r/o. Hatte Nagar, Road No.2,
Latur

..Respondents

Mr.R.P.Adgaonkar, Advocate for applicant

Mr.S.B.Joshi, APP for respondent no.1

Mr.P.P.More, Advocate for respondent no.2

CORAM : SANGITRAO S. PATIL, J.

DATE : JUNE 29, 2018

ORAL JUDGMENT :

Rule, made returnable forthwith. With the
consent of the parties, heard finally.

2. The petitioner has challenged the judgment and order dated 02.02.2018 passed in Criminal Revision Application No.19 of 2017 by the learned Additional Sessions Judge, Latur, whereby, the order dated 11.02.2015 passed in R.C.C. No.597 of 2012 by the learned Judicial Magistrate, First Class (9th Court), Latur, issuing process against respondent no.2, came to be quashed and set aside.

3. The petitioner and respondent no.2 formed a partnership firm in which the son of the petitioner and the petitioner himself had 25% share each. According to the petitioner, the son and himself purchased the land ad-measuring 2 H 13 R out of Survey No.45 of Latur, in the name of the partnership firm from their own money under the sale-deeds dated 25.07.2009 and 22.04.2010. It is further stated that respondent no.2 also contributed in the price of the said land. Respondent no.2 had no right to transfer the said land. However, he created plots in that land and sold them out to various persons without the

consent of the petitioner and his son, posing himself to be the sole owner of that land and received Rs.1,41,00,000/- from the sale proceeds. Respondent no.2 did not give the share of petitioner and his son in the sale proceeds of the said plots. Therefore, the petitioner and his son dissolved the partnership by giving notice dated 17.04.2011. However, thereafter also, respondent no.2 sold the plots to many persons. Therefore, according to the petitioner, respondent no.2 committed the offences punishable under Sections 420, 465, 471 and 403 of the Indian Penal Code. The petitioner filed a complaint before the Judicial Magistrate, First Class for the above-mentioned offences. The learned Magistrate vide order dated 11.02.2015 issued process against respondent no.2 for the offences punishable under Sections 406, 420, 465 and 471 of the Indian Penal Code.

4. Respondent no.2 challenged the order dated 11.02.2015 passed by the learned Judicial Magistrate,

First Class, whereby process was issued against him, by filing Criminal Revision Application No.19 of 2017. After hearing the parties and considering the facts and circumstances of the case, the learned Additional Sessions Judge, Latur, vide the judgment and order dated 02.02.2018, allowed the Revision Application, quashed and set aside the order dated 11.02.2015 and discharged respondent no.2 of the above-mentioned offences. The petitioner has challenged the judgment and order dated 02.02.2018 passed by the learned Additional Sessions Judge by this Writ Petition.

5. The learned Counsel for the petitioner submits that the land was purchased by the petitioner, his son and respondent no.2 for and on behalf of the partnership firm. Respondent no.2 was not the sole owner of that land. However, respondent no.2 dishonestly sold out the plots out of that land, without the consent of the petitioner and his son and grabbed the sale-proceeds thereof. He committed

criminal breach of trust since he utilised the sale-proceeds of the plots sold out by him for his own and did not give any share to the petitioner and his son. Relying on the judgment in the case of **Nandlal Lakhotia Vs. State of Bihar, LEX (PAT) 2000 5 6** of the High Court of Patna, he submits that respondent no.2, being a working partner of the firm, is guilty of the above-mentioned offences for his above-referred misdeeds. He then submits that though a civil remedy is available for the petitioner and his son for claiming share in the profit, the same by itself would not debar the petitioner from initiating criminal proceedings against respondent no.2 for the above-mentioned offence. In support of this contention, he relied on the decision in the case of **Maratt Rubber Ltd. Vs. J.K. Marattukalam, (2000)9 SCC 547**. He submits that the learned Additional Sessions Judge did not appreciate the facts of the case properly and wrongly quashed and set aside the order passed by the learned Judicial Magistrate First

Class, issuing process against respondent no.2. He prays that the Revision Application may be allowed, the impugned order may be quashed and set aside and the order dated 11.02.2015 passed by the learned Judicial Magistrate, First Class may be restored.

6. The learned Counsel for respondent no.2 strongly opposed the Writ Petition. He pointed out that as per the Clause 11 of the deed of partnership, the business of the said partnership firm was to purchase and sell properties, make plots and sell them, construct row-houses, houses and sell them, purchase houses and sell them and take contracts for constructing buildings on commission basis, etc. It was stipulated that for doing any other business activity, besides the above-mentioned activities, a partner was under an obligation to obtain consent of other partners. He points out that the sale deeds in question have been executed by respondent no.2 as a Managing Partner on behalf of the partnership firm and not in his individual capacity. He submits that

for selling the plots, it was not at all necessary to obtain the consent of the petitioner and his son. He submits that the petitioner and his son have been given their share in the profit of the plots. If they are not satisfied with the share given to them, they may approach the Civil Court. He submits that the dispute is purely of civil nature. The learned Additional Sessions Judge has rightly quashed and set aside the order issuing process of against respondent no.2. He, therefore, prays that Writ Petition may be dismissed.

7. In paragraph 13 of the judgment delivered by the learned Additional Sessions Judge, there is a specific mention of Clause 4 of the partnership deed, whereunder it has been clarified, as to what would be the nature and scope of business of the partnership firm. Purchasing of properties/land, making plots therein and selling the same, are the activities which were to be performed by the partnership firm. Respondent no.2 seems to be the managing partner of

the firm. It was mentioned in Clause 4 of the partnership deed that for doing any other activity, which is not mentioned in the partnership deed, the consent of other partner would be necessary. As such, for purchasing land, creating plots therein and selling them, consent of the other partners was not necessary.

8. It is further observed in paragraph 13 of the judgment of the learned Additional Sessions Judge, that respondent no.2 has sold out the plots in the capacity of the managing partner of the partnership firm and not in his individual capacity. If that be so, the contention of the petitioner that respondent no.2, posing to be the sole owner of the plots, sold them out to various persons, cannot be accepted. Since respondent no.2 sold out the plots on behalf of the partnership firm in his capacity as a managing partner, the said transactions would certainly come within the ambit of Clause 4 of the partnership deed. For selling the plots as per the

the terms of Clause 4, it was not necessary for respondent no.2 to obtain consent of the petitioner and his son.

9. As has been specifically stated by the learned Counsel for respondent no.2, respondent no.2 has given share to the petitioner and his son in the profits of the firm earned by selling of the plots. It seems that there is some dispute about the actual amount that was expected by the petitioner and his son towards their share in the profit. Such a dispute is purely a civil dispute. From the facts and circumstances of the case, it cannot be said that respondent no.2 had an intention to cheat the petitioner and his son since inception or that he misappropriated the funds of the partnership firm. The facts in the case of **Nandlal Lakhotia (supra)** has no bearing on the facts of the present case. In paragraph 13 of the said case, there is reference to Clause 15 of the agreement entered into between the parties therein, which prohibits either of the

parties to enter into any transaction detrimental to commercial interests of the firm except with the consent in writing of the other party. As per Clause 16 of the agreement, on behalf of the firm, every partner was entitled to sign on tenders and contracts, to receive payment, to draw, accept or endorse bill or cheques in the name of the firm and to do other lawful acts as may be necessary in the interests of the firm and not otherwise, by the either party. In the present case, as seen from Clause 4 and Clause 11 of the deed of partnership, respondent no.2 was authorised to sell the plots, without even taking consent of the petitioner and his son. In the circumstances, the ruling in the case of **Nandlal Lakhotia** (supra) would not be any help to the petitioner.

10. In the case of **Maratt Rubber Ltd.** (supra), it has been observed that mere pendency of a civil proceeding before Civil Court would not be a bar for quashing the criminal proceedings. There is no

dispute about this proposition of law. However, the facts in that case disclose not only civil, but criminal liability as well. In the present case, the dispute between the parties is purely of civil nature. In the circumstances, the said ruling also is not helpful to the petitioner.

11. The learned Additional Sessions Judge has rightly considered the facts of the case and rightly held that no offence is disclosed against respondent no.2. The impugned order passed by the learned Additional Sessions Judge is quite legal, proper and correct. It does not call for interference. The Writ Petition is liable to be dismissed.

12. In the result, I pass the following order :-

- (i) The Writ Petition is dismissed
- (ii) Rule is discharged.

[SANGITRAO S. PATIL, J.]