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

CRIMINAL WRIT PETITION 448 OF 2017

Sitaram S/o Damu Mate
Age 61 years, Occ-Agri,
R/o Nighoj-Nimgaon, Tq. Rahata,
Dist.Ahmednagar .. PETITIONER
(Orig.Complainant)

Versus

1] Sau. Bharati Ramkrishna Misal
Age 50 yers, Occ.Agri & Household
R/o Mundewadi, Tq. Kannad,
Dist.Aurangabad ..Ori.Accused no.2

2] The State of Maharashtra
Through Police Inspector,
Kopargaon, Tq. Kopargaon
Dist.Ahmednagar ..RESPONDENTS

Mr.Sachin Deshmukh, Advocate for petitioner.
Mrs.Rashmi S. Kulkarni,Advocate for respondent no.1.
Mrs.V.S.Chaudhari,APP for Respondent 2.

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 13/06/2018.
PRONOUNCED ON :20/06/2018.

JUDGMENT :

1] Rule. Rule is made returnable forthwith. With the consent of both sides, the matter is heard finally at the stage of admission.

2] In this Writ Petition filed under Article 227 of the Constitution of India, the petitioner who is the original complainant is impugning the order passed by the learned Additional Sessions Judge, Kopargaon in Criminal Revision No.44/2016 dated 15/12/2016 whereby the learned Additional Sessions Judge allowed the Criminal Revision and by quashing and setting aside the order passed by the learned Judicial Magistrate, First Class, Rahata in R.T.C. No.145/2015 dated 8/7/2015 directing process to be issued against the respondent no.1 and dismissed the complaint under Section 204 of the Cr.P.C. as against her.

3] Shortly stated the facts leading to the filing of this Writ Petition are to the effect that the petitioner filed private complaint *inter alia* alleging that the accused no.1 with the help of accused nos.9 to 12 had deceived his father and got executed an irrevocable power of attorney on 29/2/2008. His father was the original owner of the land Block No.165/1 of village Nimgaon-Korhale, Tq. Rahata. When the petitioner got the knowledge of execution of such power of attorney he caused it to be revoked by publishing notice in couple of news papers and by serving a notice to the accused no.1 by a registered post on 5/11/2008.

4] Since dispute had arisen between the petitioner and the accused no.1, accused no.7 who was a practicing advocate sought to mediate. Under that pretext accused no.7 asked the petitioner to fetch stamp papers and made him to sign those. Believing in him, the petitioner put his signatures on the blank stamp papers. It was transpired that the accused no.1 and the accused no.7 in collusion, with an intention to deceive the petitioner fabricated a forged affidavit by misusing one of the blank stamp papers reciting that the notice issued by him to the accused no.1 dated 5/11/2008 revoking the power of attorney was withdrawn and he had authorized the accused no.1 to transfer the land Block No.165/1. The affidavit was got notarized from the accused no.8. It was then alleged that on the basis of such power of attorney, the accused no.1 sold the land to the accused no.2 (respondent no.2 herein) by executing a registered sale deed. It was thus alleged that all the accused in furtherance of their common intention to cheat the petitioner indulged in forgery and deception and got the land transferred to the respondent no.2.

5] The learned Magistrate initially directed an inquiry by police under Section 202 of the Code of Criminal Procedure. After receiving the report he also himself conducted inquiry. By order dated 8/7/2015 he dismissed the complaint as against the accused nos. 3 to 12 but issued process against the accused no.1 and the respondent no.2 for the offence punishable under Sections 420, 465, 468, 471 read with Section 34 of the Indian Penal Code. Being aggrieved by such order the respondent no.2 preferred the revision before the learned Additional Sessions Judge under Section 397 of the Code of Criminal Procedure.

6] After hearing the revision, by the impugned order, the learned Additional Sessions Judge allowed the revision and dismissed the complaint filed against the respondent no.2 by setting aside the order passed by the learned Magistrate directing issuance of process against her.

7] The learned advocate for the petitioner would submit that the learned Additional Sessions Judge has ignored vital facts pleaded in the complaint. He overlooked the specific allegation about all the accused persons having in furtherance of their common intention to grab the property of the petitioner had indulged in forgery and cheating. The respondent no.2 was the beneficiary of the forgery and deception. The learned Magistrate after due inquiry had found substance in the allegation as against the respondent no.2 and had exercised the discretion in issuing the process. The decision was based on objective material and could not have been lightly interfered with by the learned Additional Sessions Judge by reappreciating the facts and circumstances. The learned advocate would further point out that merely because the dispute is apparently of a civil nature, one cannot jump to the conclusion that there is no criminality involved. There could be a civil dispute tainted with an element of criminality. The case in hand is one such matter where the dispute involves criminality. There are specific allegations against the respondent no.2 that in collusion with the other accused she had indulged in the act of forgery and cheating with an intention to grab the property. An opportunity should have been extended to the petitioner to substantiate the allegations and by dismissing the complaint he has been deprived of such an opportunity by dismissing complaint at the threshold. The learned advocate cited the decision in the case of **Arun Bhandari V/s State of Uttar Pradesh and others; (2013) 2 S.C.C. 801** to bring home the point that the jurisdiction under Section 227 of the Constitution of India to quash the order taking cognizance is extra ordinary and when there is a concurrent civil and criminal liability, the criminal proceeding should not be quashed. Thus according to the learned advocate the impugned order passed by the learned Additional Sessions Judge clearly ignores the law. The order is perverse, arbitrary and capricious and may be set aside by restoring the order passed by the learned Judicial Magistrate, First Class.

8] The learned APP submits that the matter may be decided on its own merits.

9] The learned advocate for the respondent no.2 strongly supported the impugned order. She would submit that the respondent no.2 in fact has not played any role in the alleged forgery or cheating. She is a bona fide purchaser who has parted with huge money and has purchased the land and is at the receiving end because of the dispute between the petitioner and the accused no.1. Based on the document in the form of power of attorney she has parted with huge sum in purchasing the land. There is absolutely no material to show that she has played any active role and has shared any common intention with the rest of the accused and particularly the accused no.1. Merely because a dispute has arisen between the petitioner and the accused no.1 on account of power of attorney, she is being falsely implicated with an ulterior motive to pressurize her to surrender the land. She can only be made liable for a civil liability but the petitioner has falsely implicated her by resorting to a short cut, when he could have enforced the civil liability against her independently. Accepting the allegations in the complaint at their face value no role could be attributed to her about her involvement in the alleged deception or forgery. It would be far fetched to think that the respondent no.2 could have run the risk of parting the money and purchasing the land in respect of which there is a serious dispute. She would not gain anything by purchasing the land in dispute by parting with a huge consideration of an amount of Rs.1 crore and 77 lakhs.

10] The learned advocate then referred to and relied upon the decisions in the case of **Dalip Kaur and Ors V/s Jagnar Singh and another; AIR 2009 (S.C.) 3191** and **International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others V/s Nimra Cerglass Technics Private Limited and another; AIR 2015 S.C. (Supp) 2402**.

11] Obviously the inquiry into the disputed facts is not contemplated while exercising the writ jurisdiction and I do not intend to venture into that arena. The principles which govern quashing of the F.I.Rs. or complaints have been far too well settled by catina of judgments of the Supreme Court and the High Courts. Oft quoted principles laid down by the Supreme Court in the case of **State of Haryana V/s Bhajanlal; AIR 1992 S.C. 604** governing the field read as under :

> "108] In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines of rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
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> **1]** 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.
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> **2]** 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.

3] 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.

4] Where, the allegations in the F.I.R. 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.

5] 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.

6] 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.

7] 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.”

12] Bearing in mind these principles if one examines the allegations in the complaint, it is quite clear that no precise and specific allegations have been levelled against respondent no.2 regarding her involvement either in the alleged forgery or the cheating. As has been rightly noted by the learned Additional Sessions Judge the complaint nowhere discloses that she had induced the petitioner to put signatures on the blank stamp papers. In fact the entire blame has been sought to be attributed to the accused no.1 for firstly getting the power of attorney executed from the father of the petitioner and secondly by getting a forged affidavit prepared by obtaining petitioner's signatures on blank stamp papers.

13] It is quite apparent that the respondent no.2 has merely purchased the land which according to the petitioner could not have been sold by the accused no.1. As can be seen, she has parted with huge consideration running into a crore and few lakhs. It is highly improbable that a man with ordinary prudence would part with such a huge consideration merely to purchase the land which is in dispute or in respect of which there is a serious dispute. It is not that the market value of the land was quite more than the money she has parted with to infer that she had got the advantage of purchasing the disputed land at a slashed price. Therefore, accepting the allegations in the complaint at their face value, still necessary ingredients for constituting cheating or the forgery cannot be made out against the respondent no.2. Applying the principles laid down in the case of Bhajanlal (supra), the allegations in the complaint and the facts alleged are inherently improbable as against the respondent no.2.

14] There cannot be any dispute as regards the principles laid down by Supreme Court in the case of Arun Bhandari (supra). However, suffice for the purpose to state that the observations and the conclusions drawn therein were confined to the facts and circumstances peculiar to the matter before the Supreme Court. The facts in hand stand on a different footing and the principles laid down therein would not be applicable to the factual matrix of the matter in hand. When it has been found that in the present case there are no sufficient grounds to proceed against the respondent no.2 by applying parameters laid down in the case of Bhajanlal (supra), the petitioner is not entitled to reap any benefit from the decision in the case of Arun Bhandari (supra).

15] The Writ Petition does not hold any merit and is liable to be dismissed.

16] The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL,J.)

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