

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

**Criminal Writ Petition No.456 of 2006
With
Criminal Application No.6715 of 2015**

* Dr. Bhaskar s/o Rambhau More,
Age 34 years,
Occupation : Medical Practitioner,
Agriculturist & Social Work
R/o Ratnadeep Clinic,
Nagar Road, Jamkhed,
Taluka Jamkhed,
District Ahmednagar. **.. Petitioner.**

Versus

- 1) The State of Maharashtra.
- 2) The Deputy Superintendent of
Police, Ahmednagar,
Taluka and District Ahmednagar.
- 3) The Police Inspector,
Jamkhed Police Station,
Jamkhed, Dist. Ahmednagar.
- 4) Sampat s/o Shiva Ghaytadak,
Age 80 years, Occupation: Nil,
R/o Siddharath Nagar, Jamkhed,
Taluka Jamkhed,
District Ahmednagar. **.. Respondents.**

Shri. V.R. Dhorde, Advocate, for petitioner.

Mrs. D.S. Jape, Additional Public Prosecutor, for
respondent Nos.1 to 3.

Shri. Rajendra S. Kasar, Advocate, for respondent No.4.

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

Date: 27 JUNE 2018

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

1) The petition is filed for quashing and setting aside the proceedings filed in Crime No.I-23/2006 and which is filed for offences punishable under sections 420, 504, 506 of Indian Penal Code, section 3(4)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and section 7(1)(d) of the Protection of Civil Rights Act, 1955. Both the sides are heard.

2) Respondent No.4 Sampat had filed F.I.R. on 25-3-2006. He has made allegation that there was agreement between him and present petitioner and under the agreement land of respondent No.4 was to be sold for total consideration of Rs.4.05 lakh. The land bearing Gat No.1067 to the extent of 1H 14R was only to be sold. It is the contention that before Sub Registrar the amount of Rs.55,000/- was given by present petitioner as part of the consideration and he gave cheque No.681014 of Rs.3.5 lakh.

3) It is the case of respondent No.4 that the transaction took place on 18-1-2002 and when he went to the bank to encash the cheque, the Branch Manager of the bank informed that there was no such amount in the account of the present petitioner. It is his contention that when he returned from the bank with cheque and showed the cheque to the petitioner, the petitioner made endorsement as "cancelled" on the cheque and asked him to go to the bank again. It is his contention that due to the endorsement the bank again refused to pay the cheque amount.

4) It is the case of respondent No.4 that when he again went to the petitioner, the petitioner gave abuses to him by taking the name of his caste, which is a scheduled caste, he gave threats and drove him out of his house. In the complaint he has made allegation that present petitioner has virtually grabbed the land of the first informant admeasuring 1H 14R and he is deceived.

5) The respondent No.4 is relying on the copy of the agreement dated 24-12-2001 written on general stamp

paper. It was submitted for the respondent that there was an agreement to sell portion of Gat No.1067 and price of Rs.45,000/- per acre was fixed. It was submitted that when there was such agreement, it does not look probable that the land was sold for consideration of Rs. Two lakh as shown in the sale deed dated 18-1-2002.

6) Copy of sale deed is on the record and it shows that in the sale deed dated 18-1-2002 not only land Gat No.1067 admeasuring 1H 14R was sold but land Gat No.1061 admeasuring 48R was also sold. In the sale deed the total consideration for the two lands was shown as Rs. two lakh. This registered sale deed shows that before the Sub Registrar entire amount was shown to be given in cash. This endorsement on which there is signature of the registering authority has presumptive value under the Indian Registration Act. There is no mention of the disputed cheque in the registered sale deed. Further, the document was executed on 18-1-2002 and the report came to be given on 25-3-2006. It is not disputed that the possession was handed over by the first informant to the present petitioner. Thus, the period of limitation fixed to

challenge such sale deed was over when the F.I.R. was given. In such cases it becomes the duty of the court to ascertain whether the complainant is trying to misuse the process of law like using criminal action when remedy in civil law is not available.

7) During trial the prosecution would be relying only on some oral evidence like evidence of respondent No.4 and some witnesses like evidence of Siddharth, son of the first informant, Navnath, another son of the first informant, Smt. Vimal and others. Statements of others show that there was some quarrel between the present petitioner and the first informant on 25-3-2006 and to some witnesses information was supplied by the first informant Sampat. The material collected includes one cheque dated 18-2-2002 of Rs.3.5 lakh bearing endorsement as "cancelled". There is no explanation with prosecution as to how the cheque was found at the residential place of the petitioner if the cheque was given to the first informant. It is already observed that in the sale deed there is mention that entire consideration was paid by cash. No record is there to show that the cheque

was presented at any time for encashment after the sale deed. Due to these circumstances even at this stage it can be said that nothing can be achieved by allowing the prosecution to go on. There is clear possibility of pressure tactics by misusing process of law. When there are documents of the aforesaid nature and they have presumptive value and when limitation period was over to challenge the transaction nothing can be achieved in the trial against present petitioner. To avoid the futile exercise and to prevent misuse of process of law, this Court holds that present petition needs to be allowed.

8) In the result, the writ petition is allowed. Relief is granted in terms of prayer clause (B). Rule made absolute in those terms. Criminal Application No.6715 of 2015 stands disposed of.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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