

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 786 OF 2014

Mr. Subhash Ramgopal Bharuka
Age : 61 Years, Occu. Business & Agriculture,
R/o. Main Road, Kannad,
Tq. Kannad District Aurangabad ..PETITIONER

VERSUS

- 1] State of Maharashtra,
- 2] Mr. Sahebrao S/o Bhaginath Zalte,
Age : 44 Years, Occu. Agriculture
R/o. Jaitapur Tq. Kannad,
Dist. Aurangabad. ..RESPONDENTS

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Advocate for Applicant : Mr. R. F. Totla
APP for Respondents: Mr. S. J. Salgare
Advocate for respondent no. 2 : Mr. S.V. Kurundkar

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CORAM :T.V. NALWADE AND
SMT.VIBHA KANKANWADI,JJ.
DATE :27th SEPTEMBER, 2018.

JUDGMENT(Per T.V. NALWADE, J) :-

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

- 2] The proceeding is filed for relief of quashing of order made by the learned Judicial Magistrate First Class, Kannad in Misc. Criminal Application No. 216 of 2012 by which the learned Judicial Magistrate First Class has directed the concerned Police Station to make

investigation under Section 156(3) of Cr.PC The Crime No. 128 of 2012 is registered after this order in Kannad Police Station for the offences punishable under Sections 420, 465, 467 and 471 of IPC against the petitioner.

3] Both the sides are heard.

4] Present respondent no.2 had filed aforesaid proceeding before the learned Judicial Magistrate First Class, he is first informant of the crime. He has made allegations that applicant is doing illegal money lending business and the complainant had taken loan from him. It is contended that by using undue influence and force the applicant obtained a sale deed in respect of portion of land Gut No. 226 in favour of the applicant on 01.04.2011. It is contended that the land is still in possession of another party and even litigation is pending in respect the land in the Civil Court. It is contended that in land gut no. 234 there was one connection in the name of the complainant and by using false record, showing that the complainant has signed on the application, the applicant got transferred the connection in his name and thereby he committed the aforesaid offences under aforesaid provisions. It is contended that false record like affidavit was also prepared for getting the connection transferred by the applicant.

5] Both the sides have produced some record. Copy of the sale deed executed in favour of applicant by the first informant dated 01.04.2011 is on record. This document shows that along with 2 Hectar 4 R land having boundaries as shown in the sale deed, the other things like electric motor 7.5 H.P, 10,900 feet pipe line and electricity quotation were sold by the first informant to the present applicant for the consideration of Rs. 13,75,000/- The reasons was shown as the complainant wanted to purchase land at other place. The submissions made and the boundaries given in sale deed dated 01.04.2011 show that in the past some portion of the land was purchased by the applicant in the name of his wife. Thus, after sale of the land under sale deed dated 01.04.2011, only small portion of land was left with the complainant from land Gut No. 226. The submissions made and the record show that as some dispute started the applicant filed Regular Civil Suit No. 66 of 2011 against the complainant and in that suit relief of temporary injunction is given in favour of the applicant in respect of land mentioned in the aforesaid sale deed. The complainant is prevented from interfering in possession of applicant over this land. The submissions made shows that Misc. Civil Appeal filed against said order of trial court is dismissed. Thus on 13.08.2012, there was order of temporary injunction in favour of the applicant and prior to that the suit was filed by him for the relief.

6] It is not disputed that aforesaid sale deed is not challenge by the complainant. The challenge was ought to have been made within three years of the execution of the sale deed but no suit is filed for setting-aside the sale deed. This circumstances cannot be ignored. In view of this circumstances and contents of the sale deed showing that the property with electricity quotation was also transferred, it was necessary for the complainant to show as to which property of electricity quotation was transferred under sale deed. The learned counsel for the complainant did not make any submission in that regard and he only submitted that under undue influence the sale deed was got executed and the nothing was actually sold.

7] Some record is produced in the present proceeding by the complainant and it shows that Aashabai, the wife of the complainant has some portion in the land gut no. 226 and she has connection of electricity in that land. Record is produced to show that in the name of complainant, there is connection of electricity in land gut no. 234. The bill of electricity of current reading dated 05.08.2018 is produced. This shows that the family of the complainant has to two separate connection of electricity supply. One is in Gut No. 226 and other is in Gut No. 234. This circumstances cannot be ignored as it cannot be said that some connection which was already there is got transferred by the present applicant. There is probability that application was moved for one more

connection and that connection was to be transferred to the applicant. Unfortunately the complainant is not ready to show that record. Some correspondence is made showing that when applicant applied to Electricity Distribution Company for giving that connection in his name, the say of the complainant was obtained and he took objection. The connection is given subject to rights which the complainant can prove in that regard.

8] The submissions made and record show that after transferring the land in favour of the present applicant the complainant executed sale deed in respect of the same land on 28.04.2011 in favour of third party. The FIR was given by the applicant against him and the crime No. 94/2011 is registered for the offence of cheating and creation of false record against Sahebrao and his wife Aashabai. There is copy of FIR given by the registration authority of the State dated 11.09.2011 showing that report is given against Sahebrao his wife and others that they deceived the office of Dy. Registrar, Registration Kannad by concealing the fact that the property was already sold and they got registration of one more sale deed.

9] It was submitted that there is allegations of illegal money lending business against the applicant. This circumstances also cannot be taken seriously. Prior to the present transaction, some portion of land Gut No.

226 was sold to the wife applicant. One more sale deed of the same land was executed by complainant and so his intention can be gathered. The submission made by the learned counsel for the complainant that under previous sale deed land was sold by his wife and so no complaint was made in respect of the said transaction cannot be considered. Thus dispute is created only in respect of one transaction when other portion was also sold in the past to the applicant.

10] The aforesaid circumstances show that no loss as such is caused to the complainant. For making out of offence cheating or forgery, the loss is required to be shown and unless that loss is caused, the offence cannot become complete. In view of this circumstances, this Court holds that it will be abuse of process of law if case is filed against the applicant and applicant is made to face the trial for aforesaid offences. In the result, Petition is allowed. Relief is granted in terms of prayer clause "B". Rule is made absolute in the aforesaid terms.

[SMT.VIBHA KANKANWADI]
JUDGE

[T.V. NALAWADE]
JUDGE

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