

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5330 OF 2010

1. Khalil Ahmed S/o Mehboob
Ahmed Qureshi,
Age: 57 years, Occ: Business,
R/o. Juna Ganj, Nanded
2. Rijwan Shaikh S/o Jafar Shaikh
Age: 30 years, Occ: Business,
R/o Juna Ganj, Nanded
3. Mohammad Muniroddin S/o.
Mohammad Khaja,
Age: 49 years, Occ: Business,
R/o. Juna Ganj, Nanded.

.....Applicants.

Versus

1. The State of Maharashtra,
Through the Secretary,
Home Department
Mantralaya, Mumbai.

And

The Superintendent of Police
Nanded,
2. Mohd. Yasar S/o. Mohd Idris Virani,
Age: 23 years, Occ: Student
R/o. Khayyam Plots, Nanded.

.....Respondents.

Mr. R.R. Mantri, Advocate for applicants.
Mr. A.A. Jagadkar, APP for respondent /State.
Mr. S.S. Kazi, Advocate for respondent No. 2.

**WITH
CRIMINAL APPLICATION NO. 1953 OF 2018**

1. Haji Abdul Rashid S/o Haji Mohd. Hussain,
Age: 72 years, Occ: Business,
R/o: Khusro Nagar, Degloor Naka,

Nanded.

2. Sk. Abdul Samad S/o Sk. Khulshu,
Age: 50 years, Occ: Business,
R/o: Pirburan Nagar,
Nanded.

.....Applicants.

Versus

1. The State of Maharashtra,
Through Shivaji Nagar
Police Station, Nanded
District Nanded.
2. Mohd. Yasar S/o Modh. Idris Virani,
Age: 23 years, Occ: Student,
R/o: Khayyam Plots, Nanded.

.....Respondents.

Mr. Joydeep Chatterjee h/f Mr. S.S. Gangakhedkar, Advocate for Applicants.

Mr. A.A. Jagatkar, APP for respondent No. 1 /State.

Mr. S.S. Kazi, Advocate for respondent No.2

**CORAM :T.V. NALAWADE AND
SMT. VIBHA KANKANWADI, JJ.
DATED : 18/09/2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

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

2) Both the proceedings are filed under section 482 of Criminal Procedure Code for relief of quashing of C.R. No. 190/2010 registered with Shivaji Nagar Police Station, Nanded for offences punishable under sections 420, 465, 468, 471, 34 etc. of Indian

Penal Code. The report is given to police by respondent No. 2, Mohd. Yasar Virani. Criminal Application No. 5330/2010 is filed by Khalil Ahmad, Rizwan Shaikh and Mohd. Muniroddin. The other proceeding is filed by Haji Abdul Rashid and his employee Shaikh Abdul Samad.

3) It is the case of complainant that applicant Haji Abdul Rashid represented him and to other four persons that he was owner of lands Survey Nos. 13/2-A, 13-B, 13-C, and 13-D, total admeasuring 8 H. 53 R. and he was ready to sell 15 Acres' portion from that land to the complainant and other four persons, who had approached him with complainant. The rate was fixed as Rs.17.5 lakh per Acre. It is the contention of the complainant that the amount of Rs. 2.625 Crore was paid by complainant and four other persons to Haji Abdul Rashid. According to the complainant, the agreement was put in to the writing on 18.2.2009 and on that day, initial amount of Rs. 1.4 Crore was given by the complainant and the complainant has given price of his share.

4) It is the case of complainant that when he requested for completion of transaction by executing sale deed, Haji Abdul Rashid represented that there was some difficulty and for avoiding the payment of stamp duty, he was making an attempt to get the sale deed executed directly from Abdul Taslim and others, the owners of

remaining portion of aforesaid land. It is contended that ultimately it was decided between the parties that the sale deed of 3 H. 88 R. was to be executed by Abdul Taslim and others from the portion of land which was still with Abdul Taslim and other co-owners. According to the complainant, accordingly a draft of sale deed was prepared on 8.12.2009. According to the complainant, as per the agreement and the amount already paid, he was entitled to get 3 shares from this land and other four persons were entitled to get two shares each. According to him, he requested to execute the sale deed in favour of his brother, his father and in his own name in respect of his three shares. According to him, the other four persons gave the names of eight persons in respect of their shares and accordingly, the draft was written. It is contended that one Ambiya Khan prepared the draft and on that day, demand draft of Rs. 1.5 lakh was purchased for making payment of stamp duty of Rs. 1.25 lakh by franking and for making payment of Rs. 25,000/- for registration. It is contended that on 8.12.2009 the transaction could not be completed and could not be registered.

5) It is the case of complainant that behind his back Haji Abdul Rashid and accused Nos. 2 to 6 who were initially with him made alteration in the draft of sale deed which was prepared on 8.12.2009. It is contended that by making alteration, three names

given by the complainant were removed and new three names of persons like Mohd. Ibrahim, Mohd. Bilal and Mohd. Shakiroddin were written and the sale deed was shown to be registered on 17.5.2010. It is contended that for registration, the Sub Registrar had visited to house of Haji Abdul Rashid and there, formalities were completed.

6) It is contention of the complainant that Haji Abdul Rashid and other persons, who are shown as purchasers on the sale deed registered on 17.5.2010 had hatched conspiracy and in furtherance of conspiracy, power of attorney was obtained in favour of servant of Haji Abdul Rashid by name Shaikh Abdul Samad from Mohd. Tasleem and others. It is contended that said employee of Haji Abdul Rashid then executed the aforesaid sale deed in favour of the persons mentioned in the sale deed and that way he was deceived by the main accused Haji and others.

7) The complainant has given the particulars of the amount given by the other four persons in whose favour the agreement of sale was made by Haji Abdul Rashid. It is his case that till 18.2.2009, he had given amount of Rs. 42.45 lakh to Haji for purchasing the three shares.

8) It is the case of complainant that some portion of aforesaid land was shown to be sold by Mohd. Taslim and others to Haji Abdul Rashid under sale deed in the past, but mutation was not made on the basis of that sale deed in favour of Haji Abdul Rashid and so, decision was taken to get the sale deed executed directly from Mohd. Taslim and others in respect of the other portion. It is contended that Haji Abdul Rashid was in a position to sell 10 Acres of land on the basis of sale deed executed in his favour by original owner, but he had agreed to sell 15 Acre of land to the complainant and four other persons and that circumstance shows that Haji Abdul Rashid had intention to deceive right from the beginning.

9) Copy of sale deed dated 16.3.2007 executed in favour of Haji Abdul Rashid by Abdul Taslim and others is produced. This document shows that out of land Survey No. 13-C, portion of land admeasuring 2 H. 2 R. and out of land Survey No. 13-B portion of land admeasuring 3 H. 33 R. was sold. The description of portions given in the sale deed shows that total area which was actually available with the original owner from this survey numbers was sold and nothing was left with original owner as some portion was taken over for public purpose already. Thus, the land available with Haji Abdul Rashid was 10 Acres 35 R. due to sale deed. However, in the boundaries of this portion mentioned in the sale deed, there is

mention that to the east of the land sold there were lands Survey Nos. 13 and 13-D and in respect of those lands also, there was agreement of sale made in favour of Haji Abdul Rashid. This document mentions that the possession was already given to Haji. It is contention of the complainant that under agreement of sale possession of the portion of 15 Acre was given to the complainant and four others.

10) Copy of agreement made by Haji Abdul Rashid with complainant and four others dated 18.2.2009 is on record. This document shows that accused Nos. 2 to 5 of the complaint were with the complainant on that day as promisee. This document shows that Haji Abdul Rashid had represented that he was owner and in possession of Survey No. 13-D, 13/2-A, 13 and 13-C to the extent of 8 H. 53 R. Out of this land, he was to sell 15 Acres of land to complainant and four others. On that day, the amount of Rs. 1.4 Crore was given to Haji and under this document, possession was given to complainant and four other promisees. In the agreement, it was mentioned that mutation was not made in favour of Haji on the basis of sale deed executed in his favour and after mutation, Haji was to execute the sale deed in favour of complainant and four others in respect of 15 Acres land.

11) Copy of general power of attorney executed by original owners Abdul Taslim and others in favour of Shaikh Abdul Samad, employee of Haji dated 10.5.2010 is on record. This document shows that power of attorney was given to authorise holder to sell the land Survey No. 13/2-A (3 H. 2 R.) and Survey No. 13-D (86 R.).

12) Copy of sale deed dated 8.12.2009 shows that aforesaid property, property mentioned in the power of attorney was sold by the aforesaid employee of Haji to eleven persons for the consideration of Rs.25 lakh. Copy of letter in respect of franking is on record and it shows that the amount was paid by Abdul Khaiyyum, purchaser No. 1 from the sale deed. This man was not with complainant on the date of agreement dated 18.2.2009. The record and submissions made show that only Shaikh Rizwan who is shown as purchaser in the sale deed dated 8.12.2009 was with the complainant as a promisee on 18.2.2009. Further, the land shown in the agreement dated 18.2.2009 was not sold by the sale deed dated 8.12.2009.

13) Copy of plaint of Special Civil Suit No. 30/2012 filed by complainant against Haji dated 26.3.2012 is produced. All the purchasers of sale deed dated 8.12.2009 and other persons like Haji, other promisees from agreement dated 18.2.2009 are made party

defendants. The suit is filed for relief of specific performance of contract. On the basis of these circumstances, it can be said prima facie that Haji was in a position to sell the property mentioned in sale deed dated 8.12.2009 to anybody including the complainant. Inference is possible that the sale deed dated 8.12.2009 was executed at the instance of Haji Abdul Rashid. The sale deed also shows that Haji signed as a witness on this sale deed and his employee executed sale deed in favour of eleven persons. It is already mentioned that in previous sale deed executed in favour of Haji Abdul Rashid, there was mention that agreement was already executed in favour of Haji in respect of remaining land.

14) The aforesaid discussion shows that Haji Abdul Rashid and his employee cannot get relief as by making some representation, Haji had collected money from complainant. Even the name of complainant was shown as purchaser in the draft, but it was subsequently changed. The other applicant from Criminal Application No. 1953/2018 was employee of Haji Abdul Rashid and it is easy to infer that he acted as per the instructions of Haji Abdul Rashid. Thus, there was prima facie intention to deceive the complainant. The chargesheet is already filed by police as the investigating agency is satisfied that Haji had intention to deceive. However, same cannot be said in respect of applicants from Criminal

Application No. 5330/2010. Only one promisee from agreement dated 18.2.2009 is shown as a purchaser in the sale deed executed in December 2009. That circumstance also cannot make purchaser liable for offence of cheating as he was simply promisee in the previous document and he had not made any promise to the complainant. He got the property of his share in the sale deed dated 8.12.2009. The other applicants were not with complainant when the agreement was made by Haji Abdul Rashid in favour of complainant and others. Thus, other applicants of the proceeding bearing Criminal Application No. 5330/2010 are simply purchasers from Haji Abdul Rashid and so, it cannot be said that they deceived in any way to the complainant.

15) The learned counsel for respondent, complainant placed reliance on observations made by this Court and Apex Court in some reported cases and they are as under :-

(i) 2008 DGLS (Soft.) 227, [Som Mittal Vs. Government of Karnataka]

(ii) 2007 (6) Mh.L.J. 468 [Barbeil Khimji Shah Vs. State of Maharashtra and Anr.],

(iii) (2012) 10 SCC 155 [State of Madhya Pradesh Vs. Surendra Kori],

(iv) 2012 (2) LJSOFT 104 [Gurmelsing s/o. Gajesing Nehra & Ors. Vs. State of Maharashtra and Anr.],

**(v) 2017 DGLS (SC) 1004 (SUPREME COURT)
[pARBATBHAI Aahir @ Parbatbhai Bhimsinhbhai
Karmur and Ors. Vs. State of Gujrat and Anr.].**

Observations are made in aforesaid cases that the provision of section 482 of Cr.P.C. can be used only when allegations on their face value in entirety do not prima facie constitute offence. It is also laid down that the power under section 482 of Cr.P.C. should not be used mechanically and routinely. There cannot be dispute over this proposition. In this regard, relevant facts are mentioned.

16) On the other hand, the learned counsel for applicants placed reliance on observations made in following reported cases :-

**(i) 2008 DGLS (SC) 1659 [V.Y. Jose and Anr.
Vs. State of Gujarat & Anr.],**

**(ii) 2004 DGLS (SC) 1254 [Uma Shankar
Gopalika Vs. State of Bihar],**

**(iii) 2015 DGLS (SC) 325 [Vesa Holdings
Private Limited and Anr. Vs. State of Kerala
and Ors.],**

**(iv) 2001 DGLS (SC) 1369 [S.W. Palanitkar
Vs. State of Bihar],**

In these cases observations are made that when there was no intention to deceive at the inception of the contract and if the dispute is of civil nature, criminal proceeding cannot be allowed. It is also observed that if criminal proceeding will be abuse of process of

law such proceeding can be quashed. There cannot be dispute over this proposition.

17) In view of the facts and circumstances of the present matter and position of law, this Court holds that relief can be granted to applicants from Criminal Application No. 5330/2010, but not to the applicants from Criminal Application No. 1953/2018. In the result, following order.

ORDER

1. Criminal Application No. 1953/2018 is dismissed. Rule is discharged.
2. Criminal Application No. 5330/2010 is allowed. Relief of quashing of aforesaid F.I.R. No. 190/10 registered at Shivaji Nagar Police Station, Nanded for aforesaid offences as against the applicants of this proceeding is allowed and the relief of quashing of the chargesheet filed against these applicants is allowed. Rule is made absolute in aforesaid terms.

[SMT. VIBHA KANKANWADI, J.]

[T.V. NALAWADE, J.]

ssc/

Salim
Shafi
Choudhari

Digitally
signed by
Salim Shafi
Choudhari
Date:
2018.09.21
18:17:17
+0530