

Rane

* 1/6 * APPEAL-731-1999 (SR.502)
Wednesday, 21.2.2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 731 OF 1999

Mehmood Amir Shaikh

Age : Adult, Occ : Service,

R/at. Adarshnagar, E.N.G.B.

368, Pimpri, Pune

....Appellant

V/s.

1. Subhas Vithal Nadhe,

Age : Adult, Occ. Nil,

R/at. Rahatani. Tal. Haveli,

Dist. Pune.

Opponent/Orig.Accd
no.2.

2. State of Maharashtra

....Respondents

* * * * *

Mr. Shriram S. Kulkarni a/w. Mr. Swapnil Mhatre,
Advocate for the appellant.

None for respondentn o.2.

Mrs. Anamika Malhotra, APP for State, respondent no.2.

CORAM :-

SANDEEP K. SHINDE, J.

DATE :-

21ST FEBRUARY, 2018.

JUDGMENT :-

1. The complainant in R.C.C. No. 296 of 1993 has preferred this Appeal against the judgment and order dated 24th March, 1999 passed by the Judicial Magistrate First Class, Pimpri whereby the original accused no.2 therein has been acquitted of the offence punishable under Section 420 of the Indian Penal Code.

2. That on 29th April, 1993 process was issued under Sections 420 and 423 of the Indian Penal Code in R.C.C. No. 296 of 1993 against the respondent herein and his father who was arrayed as accused no.1 therein. The Learned Judicial Magistrate First Class was pleased to convict the accused no.1 under Section 420 of the Indian Penal Code, however, the accused no.2 who is his son has been acquitted of the said offence.

3. Aggrieved by the order of acquittal as aforesaid, this Appeal is preferred.

4. Heard Mr. Kulkarni, Learned Counsel for the

appellant. None for respondent no.1, though served.

Facts :

5. By a registered sale-deed dated 18th June, 1991 Vithal Bhiku Nadhe sold land admeasuring 3 Areas from Survey No.104 to the complainant for the total consideration of Rs.35,000/-. Later, it was found that, Vithal had no title and/or right to sell the property . On enquiry, the complainant came to know that there were disputes between accused no.1, Vithal and his sister in respect of some ancestral properties including Survey No.104. The disputes were finally resolved in the Apex Court and a compromise decree was drawn on 14th June, 1991 whereby Survey No.104 fell to the share of sister of Vithal Bhiku Nadhe, accused no.1. On the backdrop of these facts, the complainant alleged that, accused no.1 knowingly misrepresented the complainant about his right and title in the said property well knowing that Survey No.104 fell to the share of his sister and thereby induced the complainant to part with the valuable consideration and as such cheated the complainant. It is

the complainant's case that, the accused no.2, who is the respondent herein had executed one agreement on 21st May, 1992 (Exhibit-111) and undertook that his father and he would remove all the encumbrances on the land which was sold to the complainant, within a particular period and if he fails to remove such encumbrances, would pay Rs.1,03,500/ on/or before 30th June, 1992.

6. It is the complainant's case that, neither the encumbrances were removed nor the amount was paid by the accused no.2 in terms of the writing at Exhibit-111. It is on the backdrop of these facts, the respondent was arrayed as accused in R.C.C. No. 296 of 1993.

7. The Learned Trial Judge, convicted accused no.1 but acquitted accused no.2, who is the respondent herein.

8. Indisputably, the accused no.2 was not a party to the sale-deed dated 18th June, 1991. He was not party

to the original lis between his father and other family members which finally culminated into a compromise decree dated 14th June, 1991. In the given set of facts, since the present respondent was not a party to the transaction recorded in the sale-deed dated 18th June, 1991 it cannot be said that, he had either misrepresented the complainant and/or induced him to part with the consideration. In view of this fact, I do not see any error committed by the Learned trial Judge in acquitting the accused of the offence punishable under Section 420 of the Indian Penal Code.

9. Mr. Kulkarni, the Learned Counsel for the appellant, however, has taken me through the document at Exhibit-11 which was executed by respondent no.1 herein. It may be stated that, the Undertaking to repay the amount which was originally accepted by his father as a consideration for sale executed on 18th June, 1991. At the highest, would be acknowledgment of debt. The document at Exhibit-11 does not spell out a promise

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and/or inducement by the respondent to part with any property. As such, I do not see any reason to interfere with the judgment and order passed by the Learned Judicial Magistrate First Class in R.C.C. No. 296 of 1993 whereby the respondent no.1 has been acquitted. In view of this fact, the Appeal is dismissed and disposed off accordingly.

(SANDEEP K. SHINDE, J)