

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 149 OF 2016

Mr. Vasudeo Jethmal Mangnani ... Applicant

Versus

Mr. Shadab Shaikh Shakil & Ors. ... Respondents

Mr. B. S. Nayak for Applicant.

Mr. Sumant Deshpande I/by Vipin Bidkar for Respondent No.2.

Mr. S. R. Shinde, APP for State.

CORAM : NITIN W. SAMBRE, J.

DATE : APRIL 11, 2018.

P.C. :

Based on a contract of purchase of a commercial block, the present Applicant initiated two proceedings, one for specific performance of contract and another complaint case for an offence punishable under Sections 406, 420, 34 of the Indian Penal Code. The order of issuance of process against Accused No. 3 - subsequent purchaser, is set-aside by the learned Sessions Judge, Pune. Hence, this Application.

2. The learned Counsel for Applicant Mr. Nayak would strenuously urge that the Applicant has issued notice in a newspaper having wide circulation informing the public at large that he has contractual interest in the block in question and as such the Accused No.3 ought not to have purchased the property from Accused Nos. 1 and 2. According to him, the said aspect is taken note off by the learned Magistrate while passing the order of issuance of process and framing of charge against Accused No. 3 for an offence punishable under Section 420 of the Indian Penal Code. He would then urge that the fact remains that out of the total consideration almost 80% amount was already paid and it is Accused Nos. 1 and 2 in connivance with Accused No. 3 has cheated the Applicant, as such the order impugned is liable to be set aside and the Accused No. 3 is liable to be prosecuted for an offence punishable under Section 420 of the Indian Penal Code.

3. None appears for the Respondent No.1.

4. Perusal of the order impugned reflects that an Agreement of the present Applicant with Accused Nos. 1 and 2 was of the year 2004. The Applicant claims to have issued notice in the newspaper in the year

2006. In 2009 Accused No. 3 has purchased the suit block, in relation to which, the suit for specific performance is informed to be already pending at the behest of the Applicant.

5. In the backdrop of aforesaid events, what could be noticed is that the Accused could be termed as a purchaser of the suit property without notice and as such there is hardly any material to infer that for an offence punishable under Section 420 of the Indian Penal Code necessary ingredients are satisfied.

6. Apart from above, the fact remains that the attribution against the Accused No. 3 appears to be civil in nature. No interference is warranted in the impugned order.

7. As such, the Criminal Application is rejected.

8. Considering the fact that Applicant before this Court claims to be a senior citizen, whose suit for specific performance is pending since 2006, considering the litigation policy, hearing of the suit is expedited.

(NITIN W. SAMBRE, J.)