

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

CRIMINAL WRIT PETITION NO. 1691 OF 2017

Shri K.R. Malik ... Petitioner
Vs.
Mrs. Shubhangi Nandkumar Salla & Anr. ... Respondents
...
Mr. Sanjiv Kadam i/by Prashant Darandule for the Petitioner.
Mr. Kaushik Jayant for Respondent No.1.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 11th JUNE, 2018

P.C.

1. The petitioner is prosecuted in a complaint filed by the respondent No.1 for an offence punishable under Sections 420, 406 of Indian Penal Code. The complaint was filed in the court of Judicial Magistrate First Class, Pune. The grievance of the complainant is that the plot of land was purchased by the complainant for which the consideration was fixed to the tune of Rs.10,00,000/- out of which the complainant has paid Rs.9,00,000/- and was willing to pay the balance consideration amount of Rs.1,00,000/- to the accused. However, there was no

progress from the side of the accused as there was no intention of plot being handed over to the complainant in accordance with the Memorandum of Understanding executed between both the parties. The complainant was compelled to approach the police machinery for setting the law into motion. However, the police did not take any action. The complainant, thereafter, filed a private complaint before the Court. The learned Judicial Magistrate, First Class, Pune vide order dated 10th May, 2016 refused the prayer for direction of investigation under Section 156(3) of Code of Criminal Procedure and the matter was kept for recording verification statement of complainant. Subsequently, the learned Judicial Magistrate, First Class, Pune was pleased to issue process against the accused vide order dated 3rd October, 2016 for the offence punishable under Sections 406 & 420 of Indian Penal Code.

2. The Petitioner had challenged the order of process by preferring Criminal Revision Application before the Sessions Judge at Pune. The said application was rejected on 17th March, 2017. Being aggrieved by the said order, the petitioner has approached this Court under Article 227 of Constitution of India.

3. Mr. Kadam, learned counsel for the petitioner submitted that the dispute is purely of civil nature. There was a memorandum of understanding between the parties wherein it is stated that in the event the petitioner fails to handover the proposed plot to the complainant within stipulated period than the petitioner's company shall refund the amount received with interest at the rate 8% p.a or shall give plot in other project owned by petitioner in surrounding area. He further submitted that another clause in the Memorandum of Understanding also indicated that the petitioner was entitled for extension of time on account of change in policy. He further submitted that the learned Magistrate had refused the investigation under Section 156(3) of Code of Criminal Procedure and the observations made therein clearly states that no cognizable offence is made out and in this circumstances there was occasion to the Trial Court to issue process against the accused for the said offences. The offences under Sections 406 and 420 are distinct and cannot go together.

4. The learned counsel for the respondent-complainant submitted that this is not a stage to consider the submissions advanced by the petitioner-accused. The learned Magistrate had recorded the verification statement and on the basis of averments

made in the complaint and the verification statement the Court was pleased to issue process against the accused. It is submitted that it was to the knowledge of the accused that the zone wherein the subject plot was situated was declared as Green Zone and in spite of that the agreement was executed with the false promise of delivering said plot of land. He further submitted that amount of Rs.9,00,000/- was parted to the accused as a consideration for purchasing of the land and the balance amount of Rs.1,00,000/- was to be paid to the accused. He further submitted that the accused is involved in similar transaction with several other persons. He submitted that the other aggrieved persons have also filed complaints against the petitioner. The submissions advanced by the petitioner are his defences, which can be adopted at the time of trial. It is therefore submitted that the petition be dismissed.

5. After hearing both the parties and going through the record, it is noted that the complainant had booked the plot of land for a total consideration of Rs.10,00,000/- and an amount of Rs.9,00,000/- was paid to the accused. The question which arises for consideration is that the promised plot was not handed over to the complainant by the accused, in spite of payment of

consideration of Rs.9,00,000/- and whether it amounts to offences as alleged. The learned Magistrate has refused to direct the investigation under Section 156(3) of Code of Criminal Procedure. However, the Court recorded verification of the complainant and on the basis of verification statement, the complaint and the documents annexed to the complaint, the Court was pleased to issue process for the said offences against the petitioner accused. The contentions raised by the petitioner will be the matter of evidence and the trial Court will appreciate the same during the trial. The trial Court's order dated 10.05.2016 may not be happily worded but the complaint was kept for verification after refusing investigation under Section 156(3) of Code of Criminal Procedure. The trial Court therefore issued process against the petitioner and dismissed complaint against other accused which reflects application of mind. The Revision Application preferred by the petitioner was rejected. It was observed by Sessions Court that, while issuing process the Court is mainly concerned with allegations in complaint or the evidence led in support of the same. There is no reason to deviate from the orders under challenge.

6. In the circumstances, no case is made out to interfere with the proceedings and hence, the petition is dismissed.

(PRAKASH D. NAIK, J.)