

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

CRI. REVISION APPLICATION NO.69 OF 2015

Anil Ganpatrao Vanakudre .. Applicant

Vs.

Kamalakar @ Sanjay Vasant Kubal & Anr. .. Respondents

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Mr.Yashodhan Gavankar, Advocate for the Applicant.

Mr.A.S. Khandeparkar i/b. M/s.Khandeparkar & Associates,
Advocate for Respondent No.1.

Mr.S.R.Shinde, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 21, 2018.

P.C. :

The applicant is the original complainant. The complaint was filed in the Court of Judicial Magistrate First Class, Vengurla, which was numbered as Regular Criminal Case No.12 of 2012.

2 The case of the complainant is that there was an oral agreement between the complainant and the accused for consolidation and sale of land with the company C & C Hotels Venture Private Limited and Sansudha Consultants Private Limited. Under the terms of the agreement, the complainant

agreed to purchase certain land from Sindhudurg district and to sell the same to the aforesaid company. Since the accused was dealing in sale and purchase of land, the complainant decided to take assistance of the accused for purchasing certain agricultural land situated at mouje Hindale, Taluka Deogad. It was agreed that the accused would purchase land in the name of the complainant from the land owners and subsequently the complainant would sell out the land to the concerned company. Hence, for purchasing the land from one Harishchandra Prabhu and others, the complainant paid advance of Rs.13,00,000/- to the accused during the period from 27th March, 2008 to 16th February, 2009, by issuing cheques. However, on 8th December, 2008, the accused fraudulently obtained sale deed of the same from the land owners in his own name though consideration of Rs.61,15,000/-, was paid to the land owner by the complainant through his own bank account. The accused promised to execute the sale-deed of the land in favour of the complainant, but, subsequently, avoided to execute the said sale-deed. The complainant, thereafter, alleged that there was no intention on the part of the accused to execute the sale-deed of the land in favour of the complainant. The accused refused to refund the advance amount of Rs.13,00,000/-. Hence, the complaint was filed

for the offences punishable under Sections 403, 406, 418, 420 and 465 of the IPC.

3 Learned Judicial Magistrate First Class, Vengurla, vide order dated 1st February, 2013, issued process against the accused for the offence punishable under Sections 403, 406, 418, 420 and 465 of the IPC. The accused preferred criminal Revision Application No.9 of 2013, before the Sessions Court, Sindhudurg at Oras. By order dated 7th May, 2014, the Revision Application was allowed by setting aside the order of process issued by the trial Court. The applicant, who is the original complainant is aggrieved by the said order and has approached this Court by preferring the Revision Application.

4 Learned counsel for the applicant submitted that the amount was parted to the accused by cheque. There was an oral agreement between the parties in respect to the land deals as stipulated in the complaint. On the basis of the averments in the complaint and the verification statement recorded by the Court, the learned Magistrate had issued process. The order issuing process was passed on the basis of the material on record and *prima facie* the Court was satisfied that case is made out for

issuing process. The complainant must be given an opportunity to proceed with the complaint by leading evidence. It is submitted that the learned Sessions Judge has committed an error while setting aside the order of process. The amount of Rs.13,00,000/- was given to the accused. There is no other reason to part with such amount except the reason stated in complaint. The grounds raised by respondent can be considered during trial.

5 Mr.Khandeparkar, learned counsel for Respondent no.1 submitted that the order issuing process was passed mechanically. The dispute, if any, is purely of a civil nature. The Sessions Court has set aside the order of process by assigning reasons which do not require interference. The complainant had already initiated civil proceedings by filing suit, which is pending in the competent Court. He further submitted that the complainant has taken different stand in respect to the said dealing at different places. There is no document on record to link the payment of amount towards the land as alleged by the complainant. He further submitted that admittedly the accused was assisting the complainant in land deals. There is no evidence on record, even, *prima facie*, to establish any offence of cheating or criminal breach of trust or forgery. He, therefore, submitted

that the order passed by the Sessions Court is not required to be disturbed in any manner.

6 I have perused the documents on record. Admittedly, there is no agreement in writing in respect to the land deals, as alleged by the complainant. According to complainant there was an oral agreement. There is nothing on record to establish the link between issuance of cheque and the loan transaction, as contended by the complainant. Learned Sessions Judge while allowing the Revision Application preferred by the accused has dealt with all the aspects in detail and set aside the order of process. The Sessions Court has observed that the case of the complainant is that there was an agreement for consolidations and sale of land executed between the complainant and the company. However, no material is placed on record which shows that any terms were settled between the complainant and the accused, wherein accused undertook to execute the sale-deed of the lands in the name of the complainant which would be subsequently sold out to the company. There was no material on record to show that the amount of Rs.13,00,000/-, received by the accused, as advance for part payment to the land owner. According to the complainant, the registered sale-deed of the

land was obtained from the accused by land owner on 8th December, 2008. However, the particulars of payment given by the complainant in the complaint indicate that from 27th March, 2008 to 16th February, 2009, total amount of Rs.13,00,000/- was paid to the accused by complainant. Out of this amount, Rs.5,00,000/- were paid to the accused on 16th February, 2009, which is after the execution of disputed sale-deed dated 8th December, 2008. Therefore, the payment of amount to the accused by the complainant from 27th March, 2008 to 16th February, 2009, cannot be connected with the sale-deed dated 8th December, 2008, as advance for part payment towards the said transaction. There was no agreement between the complainant and the accused showing that the accused had agreed to execute the sale-deed in the name of the complainant. There is no evidence on record to establish the charge of forgery. From the record, it reveals that on the application moved by the complainant, the trial Court directed the Income Tax Department to produce statement of complainant and accused recorded by the Department. The statement of the accused does not show that there was any land dealings in between the complainant and the accused. The documents indicate that there was an investment of Rs.61,15,000/-, for purchase of agricultural land at Morve and

Hindale, whereas the statement of the complainant before the Income Tax Authority show that the accused and one Sudesh Kerkar used to help him in real estate business and the complainant has paid some charges to the accused for his assistance. In the light of all the aforesaid factual aspects, the learned Sessions Judge has rightly concluded that there was no case made out, *prima facie*, constituting any offence for which the process is issued by the trial Court. Taking into consideration the averments in the complaint and the documents on record, it cannot be said that there was an infirmity in the order passed by the Sessions Court allowing the Revision Application. In the circumstances, no interference is called for and the application is required to be rejected. Hence, Criminal Revision Application stands rejected.

(PRAKASH D. NAIK, J.)