

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3474 OF 2018

Anand Mukesh Patel.

..Petitioner.

Versus

State of Maharashtra & Another.

..Respondents.

Mr. Satish Maneshinde and Ms. Anandini Fernandes for the Petitioner.

Mrs. P. P. Shinde, APP for the Respondent-State.

Mr. Sandeep Kokane for Respondent No. 2.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

Date : **October 10, 2018.**

P. C. :

1. Heard the learned counsel for the Petitioner, learned counsel for Respondent No. 2 and learned APP for the Respondent-State.
2. The petition is filed for quashing and setting aside the proceedings of criminal case bearing CC No.2317/PW/2018 pending on the file of Additional Chief Metropolitan Magistrate, 10th Court at Mumbai. The said case has arisen from the FIR bearing CR No. 196 of 2014 registered with Juhu Police Station at the instance of Respondent No.2 for the offence punishable under sections 419, 420, 467, 468 and 471 read with 34 of the Indian Penal Code, 1860.

. Initially, the said FIR was filed against three persons, namely, Mehul Patel, the Petitioner – Anand Patel and Popat Vavde. After investigation, charge-sheet is filed against four persons, namely, the Petitioner, Mehul Patel, Swaroop Shinde and Rajabhau @ Raju Yadav. Swaroop Shinde and Rajabhau Yadav are shown to be absconding accused.

3. Pending trial, the Petitioner and Respondent No.2 settled their disputes amicably and have approached this Court for quashing the proceedings of the subject criminal case qua the Petitioner, by consent. Respondent No.2 has accordingly filed an affidavit dated 27th August 2018. In paragraph 6, he has stated that he does not to proceed qua the Petitioner in the subject criminal proceeding. In paragraph 7, he has given consent to quash the proceedings of subject criminal case qua the Petitioner only.

4. Respondent No.2 is personally present before the Court. On specific query made by us, he submitted that he has made the said affidavit on his own free will, without there being any pressure or undue influence. He has further confirmed that he has no objection for quashing the subject criminal proceedings initiated by him against

the Petitioner herein.

5. Learned APP opposed the petition on the ground that the Petitioner in collusion with other accused has committed offences of cheating and forgery. She relied upon the decision of the Apex Court in Parbatbhai Aahir v. State of Gujarat [(2017) 9 SCC 641], to contend that offences like forgery, cheating and conspiracy implicate the societal interests and therefore cannot be quashed.

6. On the other hand, learned counsel for the Petitioner relied upon the decisions of the Apex Court in Gian Singh v. State of Punjab [(2012) 10 SCC 303] and Narinder Singh v. State of Punjab [(2014) 6 SCC 466] and Anita Maria Dias v. State of Maharashtra [(2018)3 SCC 290].

7. In the light of rival contentions, we have examined the charge-sheet. It discloses that the main accused and present Petitioner are cousins. They made false representations to the complainant that the land Survey No. 329-1/2 at Mulshi, Man, District Pune is available for sale and the price of the said land is Rs. 23 crore. The accused represented the complainant that they had already paid an amount of Rs.3 crore to the owners, by way of earnest money and

they also produced agreement to sell. They further represented to the complainant that HDIL is ready to purchase the said property @ Rs.3.50 crore per acre. The complainant was also represented that in the event he contributes an amount of Rs.1.50 crore, he will have 33% of share in the deal. It is further disclosed that accused tendered photograph and search report of the same. FIR discloses that on the basis of these representations, the complainant parted with an amount of Rs.1.50 crore in the form of six demand drafts and handed over the same to other accused - Mehul Patel. During investigation it was found that said amount was encashed by Mehul Patel. It was also found that the agreement of sale, the search report and letter-head of HDIL company were fabricated. On the basis of such investigation, charge-sheet as stated above came to be filed.

8. As stated above, the complainant-Respondent No. 2 herein has settled disputes with the Petitioner as he has found that amount he had advanced, was encashed by Mehul Patel and Mehul Patel only has reaped illegal benefits. It was not the case of prosecution that fabricated documents were used by present petitioner to effectuate the transfer of title. It is also not case of the

prosecution that owners of the land are deprived of their ownership. Further it is not case of the prosecution that any loss is caused to the public exchequer. In the light of these, the decision of in *Parbatbhai (supra)* is not applicable to the present case.

9. If the case of prosecution is considered in proper perspective, then we find that the accused induced complainant to part with money on the basis of fabricated documents. In that view of the matter, we are of the view that dispute between the parties is essentially a private one. Therefore, decisions of the Apex Court in *Gian Singh, Narinder Singh and Anita Dias (supra)* are squarely applicable to the facts of the present case and there is no offence made against the society at large.

10. In that view of the matter, writ petition is allowed in terms of prayer clause (a). As the police machinery and Court machinery was used by the parties to settle their private disputes as a corollary of differences of opinion, we find it would be appropriate to saddle the the Petitioner with the cost of Rs.50,000/-, which shall be paid to Maharogi Sewa Samiti, Warora, (Anandwan) a non profit organisation established to help socially disadvantaged people. For

the quashment to take effect, the Petitioner shall pay the said cost and produce the receipt thereof on the file of this Court within the period of four weeks from today. Failing to pay cost and produce receipt within stipulated time, petition shall stand dismissed automatically without further reference to the Court and order quashing the proceedings/FIR shall be treated as *non-est*.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]