

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO.419 OF 2018

(Madan s/o Hiralal Barbate Vs. State of Maharashtra thr. PSO PS Ramte, Dist.
Nagpur)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri Y.J. Maheshwari, Advocate for Applicant.
Shri T.A. Mirza, APP for Respondent-State.
Shri Alok Daga, Advocate for complainant to assist the prosecution.

CORAM: ROHIT B. DEO, J.

DATE: 4th JULY, 2018.

The applicant is apprehending arrest in Crime 329/2018 registered with Police Station Ramtek for offence punishable under section 420 of the Indian Penal Code.

The offence is registered on the basis of complaint lodged by Shri Vishnu Samudre, who is before this court since he was permitted to assist the prosecution.

The contention of Shri Vishnu Samudre is that by and under sale-deed dated 16.10.2014 the applicant sold land admeasuring 1750 sq.ft. forming part or parcel of P.H. 48, Sr.No.598/1 of Tahsil Mouda, District Nagpur to him although the land was already sold to one Dhyaneswar Motghare and even prior to the said sale was mortgaged with Bank of India. The gist of the complaint is that Shri Vishnu Samudre was induced to part with an amount of Rs.1,22,000/- on a false representation that the applicant has clear and marketable title with the said land.

The land admeasuring 1750 sq.ft. is in possession of the complainant Shri Vishnu Samudre. In order to show his *bona fide* the applicant has undertaken to refund the consideration of Rs.1,22,000/- to the complainant along with interest thereon at the rate of 7.5% per annum calculated w.e.f. 16.10.2014 till the date of payment. In response, the complainant has agreed to handover the possession of the said land to the applicant.

However, the complainant Shri Vishnu Samudre claims that since he purchased the said piece of land he has spent approximately Rs.7,50,000/- on development. The complainant is free to institute appropriate proceedings in the Civil Court for recovery of the said amount or for any other relief concerning the said land. Every contention shall be open to the complainant Shri Vishnu Samudre in any civil proceedings which he may initiate either to seek a declaration of title or possession or compensation or any other relief concerning the said land.

Shri Maheshwari, the learned counsel for the applicant would submit that the sale-deed executed in favour of Shri Motghare was a nominal sale-deed and the transaction was a money lending transaction and the complainant has already instituted civil suit seeking a declaratory relief against Shri Motghare. Be that as it may, the applicant shall also be at liberty to institute any further proceedings in respect of the said land and to claim such relief as he is entitled to in law. Needless to say, any observation made in this order is only in the context of the

voluntary offer of the applicant to demonstrate his *bona fides* and shall have no bearing on the rights of the parties which ultimately shall have to be proved in the Civil Court.

In this view of the matter, the application is allowed.

In the event of arrest in Crime 329/2018 the applicant shall be released on furnishing personal bond of Rs. 15,000/- with a solvent surety of like amount.

The applicant shall attend Police Station Ramtek, District Nagpur as and when required by the Investigating Officer.

The applicant shall not tamper with the evidence nor shall attempt to influence the witnesses in any manner.

The application is disposed of accordingly.

JUDGE