

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**1 CRIMINAL APPLICATION NO.1583 OF 2017**

Sujit Ramchandra Jadhav,  
Age : - 46 years, Occ. Service,  
R/o. Kakade Plot,  
Near Bhai Udhavrao Kanya Prashala,  
Sambhaji Nagar, Osmanabad,  
Taluka & District Osmanabad.

**... APPLICANT  
(Orig. Accused No.2)**

**VERSUS**

1. The State of Maharashtra  
through DGP, Osmanabad

(Copy to be served on Public Prosecutor,  
High Court of Judicature of Bombay,  
Bench at Osmanabad)

2. Ashok Kondiba Yevrikar,  
Age – 57 years Occu. Service as  
Sectional Engineer (Mech),  
Maharashtra Jivan Pradhikaran,  
Water Management Division,  
Aurangabad (Garkheda),  
Taluka & District Aurangabad.

**... RESPONDENTS  
(Resp. No.2 Org. Complainant)**

...

Advocate for Applicant : Mr. Chapalgaonkar S.G.

APP for Respondent/State : Mr. S. B. Joshi

Advocate for respondent no.2 : Mr.Bhale Babasaheb S. and Waghpatil D.M.

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**CORAM : MANGESH S. PATIL, J.**

**DATE : 27.08.2019**

## **JUDGMENT :**

Heard.

2. Rule.

3. Rule made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

4. In this proceeding under Section 482 of the Code of Criminal Procedure, the accused no.2 from Regular Criminal Case No.178/2012 pending before the Chief Judicial Magistrate, First Class, Osmanabad for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, is seeking its quashment under Section 482 of the Code of Criminal Procedure.

5. The learned advocate for the applicant submits that complainant had entered into the alleged oral agreement with the accused No.1, whereby, the former had agreed to sell the property to the latter for an amount of Rs.30,000/-. However, that alleged agreement had taken place in the year 2003. There are no allegations about the applicant having played any role in enabling the two to enter into the agreement. In fact there is no whisper in the entire complaint about he having ever induced respondent no. 2 to enter into that transaction. The ingredients for constituting the offence of cheating cannot be made out even after accepting the allegations in the

complaint. It is a pure civil transaction. It would be a misuse of the process of the Court, if the applicant is allowed to face the charge in the facts and circumstances. Going by the principles laid down in the case of **State of Haryana V/s Bhajan Lal; 1992 Supp (1) SCC 335**, the complaint needs to be quashed as against the petitioner.

6. The learned advocate for the respondent no. 2 submits that there has been the recorded conversation, wherein, the petitioner has admitted about his role in the transaction. All the three i.e. the petitioner, the respondent no.2 and the accused no.1 have been serving in the same department and are aware about the transaction since inception. In spite of having knowledge about the transaction between the respondent no.2 and the accused No.1, the petitioner has purchased the plot from the accused no. 1 which is sufficient to show that he has shared common intention with accused no.1 and deceived the respondent no.2.

7. I have carefully gone through the record and the proceedings. The allegations against the present petitioner who is the subsequent purchaser, are that he along with the accused no.1 deceived the respondent no.2 to enter into the transaction and having purchased plot in question in spite of the knowledge about the agreement of sale between the accused no.1 and the respondent no.2.

A careful perusal of the entire complaint shows that there is absolutely no whisper about the petitioner having ever expressly or by his conduct deceived the respondent no.2, muchless, with some dishonest intention to make him part with the money. On the contrary, there is absolutely no mention in the complaint that he was aware and present since inception during which time the alleged agreement took place between the accused no.1 and the respondent no.2. Importantly, the agreement had taken place in the year 2003, whereas, the petitioner has purchased the plot from the accused no.1 in the year 2011. Assuming for the sake of argument that the petitioner has purchased the plot knowing fully or being aware about such an earlier agreement between the accused no.1 and the respondent no.2, still that would not *ipso facto* give rise to all the necessary ingredients for constituting the offence of cheating punishable under Section 420 of the IPC.

8. Without intending to scan the material, even if the recorded conversation which is available in the proceedings amongst the petitioner, the respondent no.2 and the accused no.1 is taken into account, it clearly depicts that all the while the petitioner has disowned any role particularly in deceiving the respondent no.2.

9. Similarly, even in the statement/deposition recorded before framing of the charge, the respondent no.2 has not attributed any

specific role to the applicant much less attributing dishonest intention on his part to deceive the respondent no.2.

10. Taking into consideration all the aforementioned facts and circumstances, in my considered view, it would be a sheer abuse of process of law, if the applicant is made to face the charge in the peculiar facts and circumstances of the case. The case is squarely covered by the principles laid down in the case of Bhajan Lal (supra).

11. The Application is allowed and the Rule is made absolute in terms of prayer clause 'B'.

**(MANGESH S. PATIL, J.)**

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