

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

CRIMINAL APPLICATION NO. 2578 OF 2019

Haribhau @ Harish @ Hari Keshav Shirude

Age: 62 Years, Occu: Business,

R/o. At Post Devi,

Tq. Shindkheda District Dhule

... Applicant

Versus

1. The State of Maharashtra

Through its West Deopur Police Station,
Dhule, Tq. And Dist. Dhule.

2. Prashant Lotan Saner

Age : 44 Years, Occu : Business,

R/o. Plot No. 39, Shahu Nagar Deopur,

Dhule, Tq. and Dist. Dhule.

... Respondents

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Mr. Vijay B. Patil, Advocate for the Applicant.

Mr. M. M. Nerlikar, APP for Respondent No.1-State.

Mr. C. V. Bhadane, Advocate for Respondent No.2

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**CORAM : T. V. NALAWADE &
V. K. JADHAV, JJ.**

DATED : 8th NOVEMBER, 2019

JUDGMENT :- (Per V. K. Jadhav, J.)

1. Rule. Rule made returnable forthwith. Heard both the sides
by consent for final disposal.

2. By this application, the applicant seeks quashing of the
Crime/FIR No. 79 of 2019 under Sections 406 and 420 of the

Indian Penal Code registered with West Deopur Police Station, Dhule, Taluka and District Dhule.

3. The applicant is the owner in possession of the plot no. 24 measuring 97 square meters out of land Survey No. 74/2/2/1 situated at Mauje Walwadi, Taluka and District Dhule. The applicant had agreed to sell the said plot to the informant and had also accepted an amount of Rs.4,11,000/- as an earnest amount. On 02.10.2016, the agreement to sell came to be executed. Even thereafter, the informant had paid an amount of Rs.2,00,000/- out of the consideration amount to the nephew of the applicant. It has been alleged in the complaint that even though substantial amount was paid to the applicant, the applicant failed to execute the sale deed as agreed, nor refunded the amount. The applicant has thus committed criminal breach of trust and also cheated the informant.

4. Learned counsel for the applicant submits that in terms of the agreement, it was incumbent upon the informant to pay the remaining amount of consideration within a period of four months and it was agreed that the sale deed would be executed after receipt of the entire consideration amount. However, the informant

failed to comply with the said terms. On the other hand, the informant had issued a notice to the applicant calling upon him to refund the alleged amount of Rs.6,11,000/-. The applicant had given reply to the said notice and denied the entire contentions. However, the informant has lodged the complaint. The learned counsel submits that the informant has already taken recourse to the civil remedy and instituted Special Civil Suit No. 47 of 2019 only for refund of the earnest amount and not for specific performance of the contract. Learned counsel submits that the entire dispute is predominantly of civil character. Even if the contents of the complaint are admitted as it is, no case is made out as against the applicant under Sections 406 and 420 of IPC. The Crime/FIR bearing No. 79 of 2019 is thus liable to be quashed.

5. Learned counsel for respondent no.2 /informant submits that in respect of the immovable property, time is never regarded as the essence of contract. Furthermore, right from the inception, intention of the applicant was to cheat the informant. However, though the applicant had accepted substantial amount as part of the consideration, he failed to execute the sale deed nor refunded the amount. The application is thus liable to be rejected.

6. We have also heard learned APP for the respondent State. Learned APP submits that the ingredients of Section 406 and 420 are rightly attracted in the facts and circumstances of the case. The application is liable to be rejected.

7. On perusal of the investigation papers and the annexures of the application, it appears that the dispute between the parties is predominantly of civil character. The informant/respondent no.2 has already taken recourse to civil remedy. It is pertinent that the informant, instead of instituting a suit for specific performance of contract, sought the relief of refund of the amount alone. Apart from this, even if the contents of the complaint are admitted as it is, no case under Sections 406 and 420 is made out against the applicant. Hence the following order:

ORDER

Criminal Application No. 2578 of 2019 is hereby allowed in terms of prayer clause (B). Rule is made absolute in those terms.

(V. K. JADHAV, J.)

(T. V. NALAWADE, J.)