

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1354 OF 2018

Chunnilal S/o Indalsing Dhanawat,
Age: 45 years, Occu: Labour,
R/o. Tisgaon,
Tq. & Dist. Aurangabad.

... **Petitioner**

Vs.

1. Surendra S/o Narendra Shevgaon,
Age: 33 years, Occu. Legal Practitioner,
R/o. Rana Pratap Housing Society,
Bajarang Chowk, N-7, Cidco, Aurangabad.

2. The State of Maharashtra,
Through (Tisgaon) Police Station
M.I.D.C. Waluj, Aurangabad.

... **Respondents**

Mr. Babasaheb A. Dhengle, Advocate for the Petitioner.
Mr. Ramesh R. Imale, Advocate for the Respondent no.1-State.
Mr. S.P. Deshmukh, Advocate for the Respondent no.2.

CORAM : MANGESH S. PATIL, J.

DATE OF RESERVING THE JUDGMENT : 04.03.2019
DATE OF PRONOUNCING THE JUDGMENT : 29.04.2019

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JUDGMENT :

Heard. Rule. Rule is made returnable forthwith. Learned advocate Mr. Ramesh Imale waives service for the respondent no.1. Learned A.P.P waives service for the respondent no.2. With the consent of both the sides the matter is heard finally at the stage of admission.

2. In this petition under Article 227 of the Constitution of India the original complainant in Regular Criminal Case No.1492 of 2015 on the file of Judicial Magistrate First Class, Aurangabad is taking exception to the judgment and order passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision No.220 of 2016, quashing and setting aside the order passed by the learned Judicial Magistrate First Class, Court No.6, Aurangabad dated 18.04.2016 directing process to be issued under Section 204 of the Code of Criminal Procedure against the respondent no.1 for the offences punishable under Section 420, 323, 504 and 506 of the Indian Penal Code and thereby in effect dismissing the complaint under Section 203 of the Code of Criminal Procedure.

3. Shortly stated the petitioner alleged that the respondent no.1 got executed from him a sale-deed of his agricultural land dated 18.10.2012 by practising fraud. Against the agreed consideration of Rs.8,50,000/- he was paid Rs. 20,000/- only and thereby was cheated. He also alleged that the respondent no.1 then instigated his wife who started quarreling with him and got separated. The respondent no.1 has thereafter sold the self same land to her for a consideration of Rs.12,75000/-. In spite of his repeated demands the respondent no.1 has not paid him balance amount of consideration.

4. The petitioner thereafter alleged that on 07.04.2014

between 11.00 to 11.30 a.m. five unknown persons came to his house and started questioning him if he was Chunnilal. When he told them that the respondent no.1 still owed him Rs.8,30,000/-, they assaulted him and threatened him of dire consequences if he would demand money to the respondent no.1. They also disclosed that the respondent no.1 had sent them. They also told to him that the respondent no.1 was sitting in the car in which they had arrived.

5. The learned Magistrate recorded the statement of the petitioner under verification under Section 200 of the Cr.P.C. and by the order dated 18.04.2016 directed the process to be issued as mentioned herein above.

6. Feeling aggrieved, the respondent no.1 preferred the criminal revision and the learned Additional Sessions Judge by the impugned judgment and order allowed it and quashed and set aside the order of the learned Magistrate. Hence this writ petition.

7. The learned advocate for the petitioner vehemently submitted that there was enough material before the learned Magistrate to take cognizance and to direct issuance of process since necessary ingredients for constituting the offences were clearly disclosed in the complaint and in the statement of the petitioner under verification.

8. Per contra, the learned advocate for the respondent no.1

submitted that the complaint and the statement of the petitioner under verification are riddled with contradictions and improbabilities and the learned Magistrate had clearly over looked these while directing the process to be issued. The order passed by the learned Magistrate was clearly perverse, arbitrary and capricious and was rightly interfered with in the revision. There is no apparent illegality committed by the learned Additional Sessions Judge in setting aside the order of the Magistrate which in result has a consequence of dismissal of complaint under Section 203 of the Code of Criminal Procedure.

9. I have carefully gone through the papers and the orders of the two courts below. I have also carefully gone through the affidavit-in-reply of the respondent no.1. It is apparent that the petitioner is coming out with two separate grievances. Firstly, according to him, the respondent no.1 practised fraud upon him and purchased the land but failed to pay the entire consideration amount. Secondly, the incident dated 07.04.2014 wherein few unknown persons had assaulted him and had threatened him of dire consequences if he demanded money to the respondent no.1. It is his version that in this episode these unknown persons had disclosed to him that the respondent no.1 was present in the car in which they had arrived and they were acting at his behest.

10. So far as the first allegation regarding fraud is concerned, it is important to note that the sale-deed was executed by the petitioner in

favour of the respondent no.1 on 08.10.2012. Whereas for the first time the petitioner had made grievance about failure of the respondent no.1 to pay consideration by filing the present complaint on 03.07.2015. It is quite astonishing to note that he never seems to have made any grievance for a period of almost four years, though, according to him since inception he was aware and was demanding balance amount of consideration to the respondent no.1.

11. It is equally important to note that according to the petitioner barely an amount of Rs. 20,000/- was paid to him against the total agreed consideration of Rs. 8,50,000/- which itself is highly improbable.

12. Besides there is one more aspect which needs a serious consideration. It is trite that it is usually assumed that the Magistrate while taking cognizance and directing a process to be issued under Section 204 of the Code of Criminal Procedure applies his mind to the allegations and the record produced in support thereof. However the matter in hand clearly demonstrates that the learned Magistrate had failed to undertake this exercise and readily directed the process to be issued. He clearly ignored the aforementioned aspects touching the probabilities.

13. Secondly, there is a material contradiction and inconsistency in the allegations made by the applicant in his complaint filed before the

Magistrate and in his statement under verification recorded under Section 200 of the Code of Criminal Procedure. As is mentioned herein-above, in the complaint he alleged, as far as the first allegation regarding fraud that the land was agreed to be sold for Rs. 8,50,000/- but failed to explain as to why and how in the sale-deed the consideration was referred to and mentioned as Rs. 2,20,000/-. It is pertinent to note that it was a registered sale-deed. Still, while citing the witnesses in the complaint he has not cited the attesting witnesses on this sale-deed as the witnesses.

14. Conspicuously, in his statement under verification recorded by the Magistrate under Section 200 of the Code of Criminal Procedure the petitioner has not even whispered about the allegations regarding sale-deed having been got executed by practising fraud. He has given a complete go by to these allegations and has simply referred to the alleged episode of assault dated 07.04.2015. This clearly shows that the learned Magistrate while directing the process to be issued under Section 420 of the Indian Penal Code has clearly over-looked that the petitioner had failed to subscribe to the allegations made in the complaint in his statement under verification. There being no other evidence led by him, the learned Magistrate had no sufficient material before her on the basis of which she could have directed the process to be issued under Section 420 of the Indian Penal Code. This fact clearly demonstrates a complete lack of application of mind by the learned

Magistrate.

15. As far as the second episode concerning the alleged assault is concerned, unlike the complaint wherein the petitioner had not at all whispered about the respondent no.1 having assaulted him, in his statement under verification he went on to state that even the respondent no.1 had participated in assaulting him. This circumstance further corroborates the conclusion that the learned Magistrate had miserably failed to apply her mind and has directed the process to be issued by readily accepting the allegations.

16. The observations and the conclusions reached by the learned Additional Sessions Judge are certainly unassailable albeit he has not referred to all the aforementioned circumstances. Be that as it may, there is no apparent illegality committed by the learned Additional Sessions Judge. The order passed by the learned Magistrate was indeed perverse and arbitrary and has been rightly interfered with and set aside by the learned Additional Sessions Judge.

17. The Writ Petition does not hold any merit and is liable to be dismissed.

18. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)