

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

CRIMINAL WRIT PETITION NO.1392 OF 2018

Devidas s/o Bapurao Patole,
Age : 76 years, Occupation : Advocacy,
Residing at House No.9, Darshan Vihar,
Beed bypass road, Aurangabad.

... PETITIONER
Original Complainant

VERSUS

1. Manisha w/o Rahuldev Patole,
Age : 31 years, Occupation : Household,
Residing presently at c/o Mr. Tejrao Sonaji
Mankape, Plot No. C-28, Mirajgave Vishwa,
Beed bypass area, Devlali road, Aurangabad.

2. The State of Maharashtra,
through the Police Station Officer,
Waluj M.I.D.C. Police Station,
Aurangabad.

... RESPONDENTS
No.1 – original accused No.1
No.2 – formal party.

...

Advocate for Petitioner : Mr. Hemant Surve and Mr. Kshitij Surve
Advocate for Respondent/State : Mr. B.V. Virdhe

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CORAM : MANGESH S. PATIL, J.

DATE : 04.10.2019

JUDGMENT :

Heard the learned advocate for the Petitioner.

2. The Petitioner is challenging the order passed by the learned Judicial Magistrate First Class in the criminal case filed by him

bearing R.C.C. No.1008/2013 thereby discharging the respondent no.1 under Section 245 of the Code of Criminal Procedure for the offence punishable under Section 420 of the Indian Penal Code, which order has been confirmed by the learned Additional Sessions Judge by dismissing his revision preferred under Section 397 of the Code of Criminal Procedure.

3. Briefly stated the allegations in the complaint are to the effect that petitioner's brother Subhash was allotted a flat from CIDCO and was in its possession since 1997. The respondent no.1 who was arrayed as accused no.2 is his daughter in law. There have been family disputes between them pending in the form of litigations in the Court. The accused no.1 submitted an application with the CIDCO authorities on 07.07.2012 requesting not to transfer that property standing in the name of Subhash to anybody else on the ground that Subhash and the petitioner have sold that property to him. He also issued a Public Notice in Daily Punya Nagari on 11.07.2012 informing public at large about petitioner and Subhash having agreed to sell that property to him. The petitioner also issued his response which was published in the same daily on 14.07.2012 refuting the assertion about he along with Subhash having agreed to sell the property to the accused no.1. The petitioner then alleged that when he issued a notice to the accused no.1 and demanded a copy of the alleged agreement, the accused no.1

did not respond. He therefore, filed Police complaint but was turned away on the premise that the dispute was of civil nature.

4. So far as the respondent no.1/accused no.2 is concerned, he alleged that in collusion with the accused no.1 she also wrote a letter to the CIDCO authorities on 11.07.2012. Thus he alleged that accused no.1 had cheated him and had indulged in forgery and attempted to grab the property of Subhash and in the process defamed him by issuing public notice. He asserted that even the respondent no.1/accused no. 2 helped the accused no.1. The petitioner sought a direction from the Magistrate under Section 156 (3) of the Code of Criminal Procedure.

5. By the order dated 04.07.2013 the learned Magistrate refused to issue any direction for investigation under Section 156 (3) of the Code of Criminal Procedure, instead he recorded statement of the petitioner on verification pursuant to the provision of Section 200 of the Code of Criminal Procedure and directed the process to be issued against both the accused for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

6. Thereafter the Magistrate recorded evidence before charge and by the impugned order directed a charge to be framed against the accused no.1 for the offence punishable under Section 417 of the

Indian Penal code but discharged the respondent no.1 as mentioned herein above. The petitioner preferred a revision before the Sessions Court against the order of discharge of the respondent no.1. By the impugned judgment, the learned Additional Sessions Judge dismissed the revision. Hence this Writ Petition.

7. The learned advocate for the petitioner submits that both the Courts below have grossly erred in discharging the respondent no.1. He would submit that there are specific and precise allegation and material showing her active involvement in cheating the petitioner. She had also written a letter to the CIDCO authorities objecting to transfer of that property (Ex. B). There was material to show that she was acting at the behest of the accused no.1 and had played active role in cheating the petitioner. The learned advocate would take me through the definition of cheating contained in Section 415 of the Indian Penal Code and the wording of Section 423 of the Indian Penal Code. He would submit that laying a false claim to the property amounted to deceiving the petitioner. By raising objection with the CIDCO Authorities asserting the property to be a joint family property, clearly shows that she had dishonestly and intentionally deceived him and has laid a false claim. There was material to show that there was connivance between the two accused and thus the learned Magistrate ought not to have discharged the respondent no.1 and even the

learned Additional Sessions Judge ought not to have endorsed such order of the Magistrate.

8. The learned advocate also placed reliance on the decision of this Court in the case of **Suresh s/o. Bhagwanrao Puri Vs. State of Maharashtra and Anr. ; 2017 ALL MR (Cri) 465**, and **Ramesh s/o. Navjibhai Bhagat Vs. Dhuneshwar S.P Pethe and Ors.; 2017 ALL MR (Cri) 2091**.

9. I have carefully gone through the complaint, the papers and the orders under challenge. One need not delve much as regards the scope and ambit of Section 245 of Code of Criminal Procedure which lays down that in a warrant case instituted otherwise than on Police report, upon taking all the evidence if the Magistrate considers for reasons to be recorded that no case against the accused has been made out which if unrebutted would warrant his conviction a Magistrate shall discharge him. Bearing in mind such scope of the provision, if one examines the matter in hand, I am embolden to state that even if the evidence led before the charge value remains unrebutted, the respondent no.1 cannot be convicted.

10. Accepting the allegations in the complaint and the evidence before the charge, the only role/allegation attributed to the respondent is about her action of writing a letter to the CIDCO Administration on

11.07.2012 (Exh.31). A perusal of this letter would only show that what she had tried to assert is that the property standing in the name of Subhash who is the brother of the Petitioner is in fact a joint family property and she had a right therein being Petitioner's daughter in law and the Petitioner and Subhash were attempting to transfer it to one Sumitra Paroji Dharme resident of Loni, Taluka Pathri, District Parbhani. She also asserted that she had already filed a proceeding against her husband and others under the Provision of Protection of Woman from Domestic Violence Act bearing Criminal Application No.1629/2010. Baring this step of writing of this letter and the bald allegation that she has been acting in collusion with the accused no.1 there is absolutely no iota of material which cumulative with these two circumstances would result in her conviction.

11. All these correspondence and paper publications have taken place in the year 2012 whereas according to her she had filed a proceeding under Domestic Violence Act in the year 2010 itself. Consequently, there is absolutely no evidence to even remotely suggest about she having committed any criminal act. Assuming that she had no right to that property and was still laying a claim therein, that would not constitute an offence of cheating either under Section 417 or 420 of the Indian Penal Code.

12. There is absolutely no allegation or evidence about she having deceived the petitioner much less dishonestly or fraudulently or to have induced him to do or refrain from doing something or to part with some property which are all the necessary ingredients for constituting these offences. For that matter, even there is no question of she having executed any deed of transfer containing a false statement of consideration which is an offence punishable under Section 423 of the Indian Penal Code. The submission of the learned advocate for the Petitioner that if not under Section 420, the ingredients would attract Section 415 or 423 is not acceptable in the facts and circumstances of the case.

13. The learned advocate for the Petitioner submits that in view of the Explanation to Section 415 of the Indian Penal Code concealment of a fact would also constitute deception. Theoretically the argument is right. However, going by the allegations and the evidence in the matter in hand, there is absolutely nothing about the respondent no.1 having indulged in some concealment which would constitute deception.

14. Thus taking into account the entire conspectus of the matter, the allegations, the evidence before charge, even if they are accepted as it is and go unrebutted, would not warrant her conviction.

15. The decision in the case of Suresh Puri (*supra*) only lays down that merely because civil remedy is available to the complainant that by itself cannot be a ground for quashing a criminal proceeding. Obviously there cannot be any difference of opinion in this regard. The point here is independent of the civil dispute, even if the evidence goes unrebutted it is not likely to warrant conviction of the respondent. As regards the decision in the case of Ramesh Bhagat (*supra*), again the complainant had alleged about the respondent having induced him to purchase the plot by making false representation that it was the owner of that plot when in fact, the agreement was executed in the year 2000 but the respondent had become owner only in the year 2002. This fact of the respondent having become owner only subsequently and was not real owner on the date of alleged agreement was held to be dishonest concealment and therefore in the facts and circumstances the order of discharge was held to be improper and was quashed and set aside. Ex facie the facts and circumstances obtaining in the matter in hand are drastically different. To repeat there is no allegation about any such concealment or deceit much less dishonestly, there is no parting of the property or inducing the petitioner to do something or to refrain from doing something which he otherwise would not have done or refrained from doing, but for such deception.

16. Considering all the aforementioned aspects, I find no

apparent perversity or arbitrariness in the orders passed by the Magistrate and the Additional Sessions Judge and find no sufficient reason to cause any interference.

17. The Writ Petition is dismissed *in limine*.

(MANGESH S. PATIL, J.)

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