

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 207 OF 2018

Manish Sharma,
Son of Shri Ravi Dutt Sharma,
Aged 43 years,
Resident of 510, Patrakar Parishar,
Sector 5, Vasundhara, Ghaziabad,
Uttar Prades - 201012

... Petitioner.

Vs.

1. State of Goa,
Through the Officer in Charge
of Mapusa Police Station,
Mapusa, Goa.

2. Lalit Wadhwa,
s/o Chunnilal Wadhwa,
Major, R/o Appt. No.532 B,
Magnolias DLF Golf Links,
Phase 5, Gurgaon, Haryana.

... Respondents

Mr. Dushan Manocha, Advocate for the Petitioner.

Mr. Pravin N. Faldessai, Addl. Public Prosecutor for Respondent No.1.

Mr. Iftikhar Agha with Mr. Ketan Morajkar, Advocates for Respondent No. 2.

WITH
CRIMINAL WRIT PETITION NO. 13 OF 2019

Manish Sharma,
 Son of Shri Ravi Dutt Sharma,
 Aged 43 years,
 Resident of 510, Patrakar Parishar,
 Sector 5, Vasundhara, Ghaziabad,
 Uttar Prades - 201012

... Petitioner.

Vs.

1. State of Goa,
 Through the Officer in Charge
 of Mapusa Police Station,
 Mapusa, Goa.

2. Wiraaj Raj Bhalla,
s/o Vibhu Raj Bhalla,
R/o Tower A5, Apartment 502,
The world Spa East,
Sector 31-40, Gurgaon, Haryana.

... Respondents

WITH
CRIMINAL WRIT PETITION NO. 14 OF 2019

Manish Sharma,
 Son of Shri Ravi Dutt Sharma,
 Aged 43 years,
 Resident of 510, Patrakar Parishar,
 Sector 5, Vasundhara, Ghaziabad,
 Uttar Prades - 201012

... Petitioner.

Vs.

1. State of Goa,
Through the Officer in Charge
of Mapusa Police Station,
Mapusa, Goa.

2. Mohit Dhar Jayal,
R/o EG2/11, Garden Estate,
M.G.Road, Gurgaon,
Haryana.

... Respondents

WITH
CRIMINAL WRIT PETITION NO. 15 OF 2019

Manish Sharma,
Son of Shri Ravi Dutt Sharma,
Aged 43 years,
Resident of 510, Patrakar Parishar,
Sector 5, Vasundhara, Ghaziabad,
Uttar Pradesh - 201012

... Petitioner.

Vs.

1. State of Goa,
Through the Officer in Charge
of Mapusa Police Station,
Mapusa, Goa.

2. Tanmi T. Singh,
s/o Jaspal Singh,
R/o D-419, 3rd Floor,
Defence Colony,
New Delhi – 110024.

... Respondents

Mr. Dushan Manocha, Advocate for the Petitioner.

Mr. S.R.Rivankar, Public Prosecutor for Respondent No. 1.

Mr. Iftikhar Agha with Mr Ketan Morajkar, Advocates for Respondent No. 2.

WITH
STAMP NUMBER MAIN NO. 314 *OF 2019*

Manish Sharma,
Son of Shri Ravi Dutt Sharma,
Aged 43 years,
Resident of 510, Patrakar Parishar,
Sector 5, Vasundhara, Ghaziabad,
Uttar Pradesh - 201012

... Petitioner.

Vs.

1. State of Goa,
Through the Officer in Charge
of Mapusa Police Station,
Mapusa, Goa.

2. Anil Lepps,
S/o Geoffery Lepps,

3. Manisha Bajaj,
w/o Anil Lepps,
Both R/o B-286, Sushant Lok-1,
Gurgaon, 122002, Haryana.

... Respondents

Mr. Dushan Manocha, Advocate for Petitioner.

**Coram : M. S. Sonak &
Nutan D. Sardesai, JJ.**

Date : 13th September, 2019.

Oral Order: (Per M.S. Sonak, J)

Heard Mr. Dushan Manocha, learned Counsel for the petitioner in each of these petitions and Mr. S. R. Rivankar, Learned Public Prosecutor for the State. Mr. Agha and Mr. Saudagar appear for some of the private respondents (original complainants).

2 In each of this petitions, the petitioner seeks quashing of FIR instituted against him alleging commission of offences under Section 406 and 420 of I.P.C.

3. Mr. Manocha, learned Counsel for the petitioner submits that this is a classic case of a civil dispute and therefore, invoking the machinery under the Criminal Code constitutes an abuse of the process. He submits that from the material on record, it is very very clear that there was no intent to cheat or even act dishonestly. He submits that at the highest, this is a case of a breach of contract or breach of warranty for which the agreement between the parties provide for suitable civil remedies.

4. He points out that when the financial institutions instituted proceedings against the petitioners under SARFAISE, even the complainant joined the petitioner in submitting before the DRT that action of the financial institution was unwarranted. He submits that all this suggests that even the complainants agree that the dispute between the complainant and the petitioner was only a civil dispute having absolutely no criminal profile.

5. Mr. Manocha submits that even if all the allegations in the complaint are held to be correct for the purpose of arguments, the ingredients of offence of Section 406 and 420 of I.P.C. are not at all made out. He relies on the case ***All Cargo Movers (India) Private***

Limited and ors. Vs. Dhanesh Badarmal Jain and anr., [(2007) 14 SCC 776], in support of this contention and on the basis of the same, submits that FIR in these matters may be quashed lest, the abuse of the process of the Court.

6. Mr. Rivankar, learned Public Prosecutor, Mr. Iftikhar Agha and Mr. Salil Saudagar, the learned Counsel for the complainants submit that in the present case, the petitioner obtained huge amounts from the complainants some time in the year 2014 on the promise of delivery of unencumbered villas. They point out that in the year 2017, the petitioner entered into formal agreements, in which, the petitioner specifically stated that the property is free from all kind of encumbrances such as mortgages, etc. They point out that on the date on which such agreements were entered into, the petitioners had already mortgaged the property in favour of the financial institution in order to raise a huge loan. They submit that all this was done by the petitioner with dishonest intention to cheat the complainant. They point out that merely because the agreement contemplates certain civil remedies, this does not mean that the ingredients of Section 406 and 420 of I.P.C. have not been made out.

7. They point out that in Criminal Writ Petition No. 13/2019 and

14/2019, 15/2019 and STM 314/2019, besides the petitioner, there are other accused persons named in the FIR who have not even chosen to challenge the FIR. They point out that the offence of conspiracy under Section 120 B of IPC is also alleged in the matter. They submit that the jurisdiction under Article 226 of the Constitution or Section 482 Cr.P.C., is to be sparingly exercised when it comes to a prayer for quashing of FIR. They submit that the ingredients of the offence are made out and this is certainly not a case of abuse of the process. For all these reasons, they submit that these petitions may be dismissed.

8. Having considered the rival contentions and having perused the material on record, we are not inclined to interfere with the FIRs in the present case, taking into consideration the limited scope of interference at this stage.

9. The records indicate that the petitioner received considerable amounts from the complainants on the promise that he would hand over the possession of certain villas. The formal agreements were executed in the year 2017, in which such promise was substantially reiterated.

10. One such agreement dated 18.09.2017 is on record in Writ

Petition No. 207/2018. Clause 5.2 of the agreement reads thus:-

“5.2 That the property is not in dispute and is free from all kinds of encumbrances, such as sale, mortgage, gift, litigation, dispute, attachment in the decree of any court, lien, charges, court, injunction, family dispute etc not been mortgage etc.”

11. There is now no dispute that as on 18.09.2017, the petitioner had already mortgaged the property in favour of the Financial Institution and secured a loan of over Rs.20 crores. However, Clause 5.2 of the agreement dated 18.09.2017 positively states that the property is free from all kind of encumbrances such as mortgage etc. In fact there is reference to word “Mortgage” on two occasions in one and the same clause. Obviously, if the intention of the petitioner was bonafide, then, the petitioner, would not have made such a representation to the complainant with a full knowledge that on the date when such representation was made, the property was mortgaged in favour of the Financial Institution.

12. According to us, there is prima facie material on record to sustain the FIR. The material on record is sufficient to prima facie

indicate the fulfillment of ingredients of Section 406 and 420 of I.P.C. Therefore, considering the limited scope of interference at this stage, we do not feel that case is made out for quashing of FIRs.

13. Mr. D. Manocha, learned Counsel no doubt contended that the issue of intention right at the stage when the agreement was entered into or the contract was entered into was most relevant. He also contended that in 2014 when the amounts were received from the complainants there was absolutely no intention to either cheat or misappropriate any amount.

14. According to us, all these are matters which have been gone into in the course of the trial or rather once the trial concludes and substantive evidence is available on record. The circumstance that we are not entertaining the present petition, does not mean that the petitioner will in any manner be prejudiced in the course of the trial. The observations in this petition are only for the purpose of deciding whether any case has been made out to quash the FIR at the threshold. The purpose of these observations is in no way to prejudice the petitioner in the course of the trial, but only to indicate in brief, the reasons for not quashing the FIRs at the very threshold.

15. Besides, merely because the matter may as well have a civil profile does not mean that no FIR can be registered, if, sufficient material exists indicating commission of offences under Section 406 ad 420 of I.P.C. In fact the Hon'ble Apex Court in the case of ***Mohd. Allauddin Khan Vs. State of Bihar & ors., [(2019) 6 SCC 107]*** has held that “*Mere pendency of civil suit is also not a ground to quash criminal proceedings where, a case is made out about fulfillment of ingredients of the criminal offence.*”

16. In ***All Cargo Movers(India) Private Limited*** (supra), the Hon'ble Apex Court came to the conclusion that the transaction between the parties was purely of a civil nature and there was no criminal profile whatsoever. In this context, the Hon'ble Apex Court by quoting its earlier decision in ***Hira Lal Hari Lal Bhagwati Vs. CBI, [(2003) 5 SCC 257]***, observed that “*this is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed.*”

17. In the present case, the promise made by the petitioner atleast at the stage of execution of the agreement in 2017 was that the property is unencumbered and consequently, the villas which will be delivered will also be unencumbered. At the time of making such promise, the petitioner was aware that he had mortgaged the property to the Financial Institution for raising loan of Rs. 20 crores. According to us, this is sufficient to prima facie sustain the allegations of fraud and dishonest intention made by the complainants. The decision in ***All Cargo Movers (India) Private Limited*** (supra) as also in ***Hira Lal Hari Lal Bhagwati*** (supra) are therefore distinguishable on this basis.

18. Besides, we find that in Cr. Writ Petition No. 13/2019, 14/2019, 15/2019 and STM 324/2019, other than the petitioners, there are other accused persons against whom FIR has been lodged. There is allegation of conspiracy. The other accused persons have chosen not to question the FIR lodged against them. This is an additional reason why the FIRs cannot, in peculiar circumstances of the present case, be quashed.

19. For all the aforesaid reasons, we dismiss these petitions. There shall be no order as to costs.

20. We once again clarify that the observations in this order are for prima facie deciding whether any case is made out to quash the FIRs at the threshold. Accordingly, such observation need not influence the Trial Court, in the course of the trial.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

MF/-