

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.157 OF 2019

Tanaji Hanumant Bhagare
Since deceased through
Dhananjay Tanaji Bhagare and Ors. ... Applicants
Vs
Prathamesh Prakash Patil and Ors. ... Respondents
...

Mr. V.S.Deokar with Ujawala Karpe for the Applicants.
Mr. Sagar A. Joshi for the respondent no.1.
Mr. M.G.Patil , APP for the Respondent No.2-State.

CORAM : SANDEEP K. SHINDE J.
DATE : 13th MARCH, 2020

P.C. :

Heard.

2 Applicants are seeking special leave to appeal under Section 378(4) of the Code of Criminal Procedure, 1973 (**'Cr.P.C.'** for short).

3 Deceased Tanaji Hanumant Bhagare had instituted complaint in the Court of Judicial Magistrate, First Class, Mangalvedha, Solapur. After enquiry directed under

Section 202 of the Cr.P.C., process was issued against Prathamesh Patil and Mahadev Gandule for the offences punishable under Sections 420 and 468 read with Section 34 of the Indian Penal Code, 1860 ('**IPC**' for short).

4 Tanaji examined himself. In cross-examination, he had admitted that the dispute relating to the property in question was pending before the Sub Divisional Officer. Besides, the learned counsel for the applicant, today on instructions, also submitted that the legal representatives of Tanaji have instituted suit in respect of the property in question, in the Court of competent jurisdiction.

5 It is the complainant's case that Tanaji's father had purchased land admeasuring 5 R in the year 1990 from Mahadev Gandule being part of Survey No.327/1 and further land admeasuring 5 R of the same Survey No.327/1 from one Padvale. It is alleged that Mahadev Gandule transferred land, i.e., 327/2 to Prathamesh Prakash Patil (Accused No.1) vide lease deed dated 2nd September, 2009, who had allegedly constructed petrol pump on land bearing

Survey No.327/1. Thus, the suit has been instituted by the complainant against Prathamesh Prakash Patil and Mahadev Gandule for the appropriate reliefs in the Court of competent jurisdiction, and till date, it is pending. It may be stated that Tanaji died in the year 2017 and thereafter present applicants were prosecuting the complaint before the learned Judicial Magistrate, First Class. However, it may be stated that the applicants did not lead the evidence or bring on record any material, in support of charge of forgery and cheating. In the absence of evidence, the learned Trial Court has correctly recorded findings in paragraph 10 of its judgment, which has been impugned herein. Paragraph 10 reads as under:

१०. फिर्यादी मयत झाल्याने त्याचा महत्वाचा पुरावा अभिलेखावर आलेला नाही. फिर्यादीचे वारसांनी स्वतंत्र कोणताही पुरावा दिलेला नाही. अभिलेखावर कोणतेही दस्त सिध्द करण्यात आलेले नाहीत. याउलट, वर नमुद साक्षीदारांच्या उलटतपासावरून असे दिसून येते की, त्यांना तथाकथित फसवणूक आणि बनावटी करण्याबाबत काहीही माहित नाही. त्यांचे पुराव्यात आरोपींविरुद्ध दोषारोप सिध्द होण्यासारखा कोणताही पुरावा नाही, त्यामुळे आवश्यक त्या पुराव्याअभावी मी मुद्दा क्र. १ व २ चे उत्तर नकारार्थी देत आहे.

6 Taking into consideration facts of the case, I do not see any perversity in the findings recorded in the order of acquittal impugned herein. Leave is, therefore, refused. Application is disposed off.

(SANDEEP K. SHINDE, J.)