

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1226 OF 2020

LAXMAN DEORAO GANAGE AND ANR.)...PETITIONERS

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Siddhesh Bhole a/w. Mr.Nikhil Ghate i/b. Mr.Siddhesh Bhole,
Advocate for the Petitioner.

Ms.Beerta Bajwa, Advocate for Respondent No.2.

Mr.S.V.Gavand, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 5th MARCH 2020

P.C. :

1 By this petition, petitioners/original accused are challenging the order dated 18th February 2020 passed by the learned Metropolitan Magistrate thereby issuing warrant of attachment under Section 421 of the Code of Criminal Procedure (hereinafter referred to as the Cr.P.C. for the sake of brevity).

2 Heard the learned counsel appearing for petitioners/original accused persons. He drew my attention to the application under Section 421 of the Cr.P.C. moved by the original complainant/contesting respondent and argued that what was sought to be attached is Apartment No.18, Silver Birch, CST No.1111, Model Colony, Pune. My attention is also drawn to the order passed on an application at Exhibit 37 by which the learned trial Magistrate was pleased to issue attachment warrant for executing order awarding interim compensation in a complaint case for the offence punishable under Section 138 of the the Negotiable Instruments Act, 1881. By taking me through the provisions of Section 421 of the Cr.P.C., it is argued by the learned counsel for petitioners/accused persons that warrant for attachment of immovable property i.e. the warrant in question, could not have been issued by the learned trial Magistrate. The learned trial Magistrate was empowered to attach movable property belonging to accused persons. It is argued that if immovable property was to be attached, then warrant was required to be issued to the Collector of the District.

3 It is further argued by the learned counsel for petitioners/accused persons that the subject property was already gifted by petitioner no.1/original accused no.2 to his daughter Ms.Nikita by registered Gift Deed dated 24th August 2019, and therefore, the learned trial court ought not to have attached the immovable property.

4 The learned counsel appearing for the contesting respondent/original complainant opposed the petition by contending that on earlier occasion petitioners had approached this court and the said petition was withdrawn unconditionally. It is further argued that thereafter petitioners had preferred a revision petition along with an application for condonation of delay which came to be rejected. It is further argued that the order directing payment of interim compensation was passed way back on 8th July 2019 and to circumvent that order, the Gift Deed came to be executed.

5 I have carefully considered the submissions so advanced and also perused the impugned order. Petitioners have approached this court in its extraordinary writ jurisdiction. One who seeks relief in equity is required to come before this court with clean hands. In the case in hand, the order directing payment of interim compensation at the rate of 20% of the cheque amount in exercise of powers under Section 143A(2)(3) of the Negotiable Instruments Act, 1881, came to be passed by the learned trial Magistrate way back on 8th July 2019 and that order was not complied by petitioners/accused persons at any point of time.

6 Petitioners/accused persons attempted to challenge the order dated 8th July 2019 passed by the learned trial Magistrate directing them to pay 20% of amount of compensation by filing Writ Petition No.4368 of 2019 before this court. It is seen from the order dated 30th August 2019 passed in that petition that this court had refused to interfere with the impugned order and had issued notice only in order to enable it to pass order for

extension of time to deposit 20% of amount of compensation as directed to be paid by the learned trial Magistrate and thereafter on 26th September 2019, this court permitted petitioners/accused persons to withdraw the writ petition unconditionally.

7 It is seen that despite withdrawal of the original writ petition challenging the order directing payment of 20% of amount of compensation, the said amount was not deposited or paid by petitioners/accused persons. However, petitioners had chosen to file revision petition challenging the very same order before the Sessions Court along with an application for condonation of delay.

8 Be that as it may, it appears that during filing of multiple proceedings and most probably on legal advice, the petitioner no.1/original accused no.2 had transferred Apartment No.18, Silver Birch, CST No.1111, Model Colony, Pune, in favour of his daughter on 24th August 2019 and this appears to be done with the sole purpose of circumventing the order of the learned trial Magistrate dated 8th July 2019 directing deposit of 20% of

compensation. With this conduct, petitioners/accused persons have disintitiled themselves to seek relief in equity as claimed in exercise of writ jurisdiction of this court.

9 Application for issuance of attachment warrant under Section 421 of the Cr.P.C. came to be filed by the original complainant before the learned trial Magistrate with a request to attach Apartment No.18, Silver Birch, CST No.1111, Model Colony, Pune, and this application at Exhibit 37 came to be allowed vide the impugned order dated 18th February 2020. The learned trial Magistrate had directed issuance of attachment warrant as prayed by the contesting respondent/original complainant. That warrant will certainly be executed in terms of provisions of Section 421 of the Cr.P.C. and at this stage, one cannot pre-judge the issue. Section 421 of the Cr.P.C. explains how the warrant of attachment of immovable property is required to be executed. This court hope and trust that the procedure prescribed in Section 421 of the Cr.P.C. will certainly be followed in the matter.

10 The transferee of the property/donee has not approached this court in the matter and the petition at the hands of original accused persons, as such, cannot be entertained.

11 In this view of the matter, the petition is devoid of merits and the same is, therefore, dismissed.

(A. M. BADAR, J.)

Arti V.
Khatate

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