

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

CRIMINAL WRIT PETITION NO.212 OF 2019

1. Shri Narayan Shenpadu Shejawalkar,
Age: 74 years, Occ: Business,
2. Sau. Rapali Kishor Shejwalkar,
Age : 36 years, Occu.: Housewife,
3. Shri Kishor Narayan Shejawalkar,
Age : 41 years, Occu.: Business,
4. Shri Sanjay Narayan Shejawalkar,
Age : 43 years, Occu.: Business,
5. Shri Sunil Narayan Shejawalkar,
Age : 46 years, Occu.: Business,
All R/o. Shejawalkar Nagar, Bhadgaon Road,
Chalishaon, Tq. Chalishaon, Dist. Jalgaon.

PETITIONERS

VERSUS

1. Shri Jayram Tukaram Jadhav,
Deceased, Shri Sanjay Jayram Jadhav,
Age : 46 years, Occu.: Agricultural work,
R/o : Tombole Bd., Tal. Chalishaon, Dist. Jalgaon.
2. The State of Maharashtra.

RESPONDENTS

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Advocate for Petitioners : Mr. Pramod D. Patil
AGP for respondent/State : Mr. V.S. Badakh
Advocate for Respondent No.1 : Mr. S.P. Brahme

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CORAM : MANGESH S. PATIL, J.

DATE : 23.02.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned advocate Mr. Brahme for the respondent waives service. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. The petitioners are invoking the powers of this Court under Article 227 of the Constitution of India in challenging the order passed by the learned Magistrate on a complaint filed by the respondent No.1 directing a process to be issued against them for the offences punishable under Section 420, 465, and 468 read with Section 34 of the Indian Penal Code. They are also impugning the judgment and order passed by the learned Additional Sessions Judge dismissing their Revision preferred under Section 397 of the Code of Criminal Procedure against the order of the Magistrate of issuance of process.

3. The learned advocate for the petitioners would submit that accepting the allegations in the private complaint filed by the respondent No.1 at the most the facts would lead to a civil dispute. No criminality is involved. It is a matter of purchasing immovable property. The respondent No.1 has already approached the Civil Court. Attempt is being made to convert a civil dispute with a criminal trapping. Both the courts below have erred in appreciating these facts and circumstances. It would be a sheer abuse of process of law to allow the respondent No.1 to prosecute the petitioners. He would rely upon the decision of the Supreme Court in the case of **Prof. R.K. Vijayasathya and Anr. Vs. Sudha Seetharam and Anr., in Criminal Appeal No.238/2019 arising out of Special Leave Petition (Crl.) No.1434/2018.**

4. Per contra, the learned advocate for the respondent No.1 would submit that *prima facie* all the ingredients for constituting the offences can be made out. The appellants agreed to sell a plot of land to the respondent No.1, however, the dimensions do not tally with the description in the sale deed. Besides, even a development plan road passes through the plot. He would further point out that originally the dispute was settled between the parties amicably. A compromise was entered into. The appellants promised to execute the sale deed with a proper description under that pretext extorted an additional sum of Rs.45,000/- and thereby deceived him to part with money and sold a plot which does not tally with the description. All

the necessary ingredients for constituting the aforementioned offences can easily be made out. There is no apparent error or perversity in the order of the Magistrate and the one passed by the learned Additional Sessions Judge.

5. I have carefully gone through the papers and the impugned orders. Needless to state that there are inherent limitations in exercising the powers of this Court under Article 227 of the Constitution of India when there are concurrent findings recorded by the two courts below taking a plausible view.

6. There is specific allegation in the complaint filed by the respondent No.1 that couple of plots were delivered in possession of father of the respondent No.1 by accepting money. Cattle shades were erected on the plots. They promised to execute the sale deed after obtaining non-agricultural use permission. Subsequently they filed a suit against him. Under the pretext of settlement they managed to extort Rs.45,000/- additionally from him and executed sale deed of a plot bearing No.32 but the description of the property does not tally. Even it transpires that the piece of land which was sold in fact is covered by a road. Taking note of these allegations which clearly make out the offences being charged the learned Magistrate has taken a reasonable view in directing the process to be issued.

7. The learned Additional Sessions Judge has also objectively examined the order passed by the Magistrate and has reached a plausible view that the allegations in the complaint and the statement under verification *prima facie* make out all the offences. Needless to say that the order passed by the Magistrate was not perverse, arbitrary or capricious, in the absence of which, the learned Additional Sessions Judge could not have reversed it while exercising the revisional powers under Section 397 of the Code of Criminal Procedure.

8. The observations and the conclusions in the case of Prof. R.K. Vijayasathathy (supra) would not come to the aid of the petitioners. That

decision was rendered in the peculiar facts and circumstances of the matter before the Supreme Court. When independently the matter in hand presents peculiar state of affairs which sufficiently makes out elements of offences, the applicant is not entitled to place reliance on this decision.

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

(MANGESH S. PATIL, J.)