

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION (APL) NO. 768 OF 2021**

Sonalika Pandharinath Jadhav
@ Sonalika Harshal Mali

.....Applicant

V/s.

Sachin Hiranman Mhaisdhune
and anr.

.....Respondents

* * * *

Mr. Ashok B. Tajane, Advocate for the applicant

Mr. Y.M. Nakhawa, APP for State.

Coram : Sandeep K. Shinde, J.

Wednesday, 20th October, 2021.

P.C. :

1. This application under Section 482 of the Criminal Procedure Code, challenges the order dated 30th August, 2021 in Criminal Misc. Application No.298/2021 by which the Judicial Magistrate First Class, Nasik issued directions under Section 202 of the Criminal Procedure Code, instead of directing the police to register the FIR and investigate the matter.

2. Background facts are that, the applicant and her mother, Smt. Sindhu Pandharinath Jadhav sold land bearing Gat Nos.563, 565, 566, 568, 569, 570 and 749 to one, Sachin Hiranman Mhaisdhune vide registered sale-deed for total consideration of

Rs.70,12,000/- (Rs.Seventy Lakhs Twelve Thousand). On the same day one, Hiranman Mhaisdhune (father of Sachin) sold his land bearing amenity plot no.38 to Smt. Sindhu Pandharinath Jadhav, mother of applicant, by registered sale-deed for total consideration of Rs.13,42,000/-. Applicant's case is, total agreed consideration was Rs.1,40,00,000/- (Rs. One Crore Forty Lakhs), yet purchaser, Sachin Hirman Mhaisdhune, unilaterally showed consideration Rs.70,12,000/- (Rs. Seventy Lakhs Twelve Thousand) in the sale-deed, without her knowledge and of her mother. It is applicant's case that, purchaser had agreed to pay balance consideration by post-dated cheques. Thus, when demanded balance consideration, it was not paid. Thus, applicant and her mother, filed a written complaint of which cognizance was not taken. According to the applicant, Sachin Hiranman Mhaisdhune, his father Hirman Mhaisdhune and two others, in collusion, dishonestly induced her to part with the property by unilaterally showing less consideration in the sale-deed, than what was agreed between them. That since cognizance was not taken, an application was filed before the learned Magistrate seeking directions under Section 156(3) of the Criminal Procedure Code, to register the offence against the respondents herein. The learned Magistrate passed the following order :

“1) Perused the Application & record.

2) Heard Adv. For Complainant.

3) Judgment in the case of Priti Saraf & oth. Vs NCT Delhi, AIR 2021 SC 153 has been relied upon. If speaks about powers u/s.482 Cr.P.C. This Court is not rested

with powers u/s. 482 Cr.P.C. Hence, this case law is not helpful to the complainant.

4) On perusal of the record & on hearing the complainant side it can be seen that, the dispute is basically of Civil nature/Documents have been placed on record. So exercise of powers U/s. 156(3) of Cr.P.C. is not warranted. Instead direction u/s.202 Cr.P.C. would be just and proper. Hence order.

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“a) Call report u/s.202 Cr.P.C. from concerned police station.

b)Complainant to comply.

c)On receipt of report, complainant to lead evidence before process.”

3. Feeling aggrieved by the order dated 30th August 2021, applicant has approached this Court in its inherent jurisdiction. Prayer Clauses (a), (b) and (c) of the application read as under :

“(a) The order dated 30.08.2021 passed by the Learned JMFC, Nashik in Criminal MA No.298 of 2021 be quashed and set aside.

(b)This Hon’ble Court be pleased to issue direction to the ld. JMFC, Nashik to issue direction u/s. 156(3) of Cr.P.C. in Criminal MA No. 298 of 2021.

(c) Pending the hearing and final disposal of the present application, this Hon’ble Court be pleased to stay further proceedings on the file of Ld. JMFC, Nashik in Criminal Case No.298 of 2021.”

4. Heard Mr. Tajane, learned Counsel for the applicant and Prosecutor for the State. The Magistrate, under Section 190 of the Criminal Procedure Code, is empowered to order investigation by police under Section 156(3), yet, if he proposes to take cognizance of the offence, he has to follow the procedure laid down in Chapter-XV of the Code. It is settled law that, the course adopted by the Magistrate i.e. direction to the police for registration of the FIR and making investigation or to treat the application as complaint case, must be supported by reason.

5. Herein, the impugned order shows the, learned Magistrate, after perusing the record, prima-facie held that, dispute between the parties was civil in nature and therefore instead of directing the police to register the offence, issued directions under Section 202 of the Criminal Procedure Code. Therefore, in my view, there is no error committed in exercise of the jurisdiction. Thus, no interference is called for. Application is dismissed. Application is dismissed.

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(Sandeep K. Shinde, J.)