IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3820 OF 2019

Ramkripal Mahadev Gupta and another. … Petitioner.
V/s.
The State of Maharashtra and another. … Respondents.

Mr.Brijesh Shukla with Ms.H.Hussein for the Petitioner.
Ms.S.D.Shinde, APP for the Respondent- State.

CORAM : NITIN JAMDAR AND SARANG V. KOTWAL, JJ.

DATE : 13 December 2021.

P.C. :

By this petition, the Petitioner is seeking to quash the FIR in CR No.251/2018 registered with Gamdevi Police Station for the offences punishable under section 420 read with section 120B of the Indian Penal Code and to quash the further proceedings based on the FIR pending in the Court of Metropolitan Magistrate, Girgaon.

2. The FIR was lodged by the Tax Recovery Officer upon a complaint made to the Senior Inspector of Police on 5 December 2018. The complaint was in respect of the property which belonged

to one Chiman Rudaji Patel. Mr.Chiman Patel was assessed to income tax. The income tax returns filed by Chiman Patel were selected for scrutiny and assessment proceedings were initiated against Mr.Patel. After the assessment, a demand was made of Rs.6.11 crore for the outstanding tax from Mr.Chiman Patel. The demand was served on Mr.Chiman Patel on 7 May 2012. Mr.Chiman Patel failed to pay the amount. The property was attached by the Department on 27 September 2012. A notice was accordingly served on Mr.Chiman Patel. Mr.Chiman Patel preferred an appeal. The appeal was dismissed. Upon dismissal of the appeal, when the Tax Recovery Officer visited the property, he found that the Petitioner was in possession claiming to be an owner and stated that he along with his wife had purchased the property by an agreement of sale dated 2 November 2012. On the allegation that though Mr.Chiman Patel was fully aware that he was prohibited and restrained by the statutory authority from transferring the immovable property, Mr.Chiman Patel along with the Petitioners entered into the conspiracy to cheat the Department and transferred the property to Petitioner No.1. and his wife to defeat the claim of the Revenue, an FIR was lodged.

3. The learned counsel for the Petitioners submitted that the Income Tax Act, 1961 covers the contingency and that being the special Act the same would prevail. The learned counsel relied upon section 276 of the Act of 1961 and section 281, more particularly proviso thereof. It is the contention of the learned

counsel that as far as section 276 of the Act of 1961 is concerned, it would relate to the assessee and the one who sells the property and the Petitioners not being the assessees and being the buyers, the said provision is not attracted. As regards section 281, it is contended that proviso thereto clarifies that in certain contingencies transfer will not be void such as if it is with adequate consideration and without notice of the pendency of the proceedings. The learned counsel submitted that the Petitioners have paid around Rs.48 lakh and have duly entered into an agreement and the Petitioners were not aware of the attachment. He submitted that therefore this is not a fit case where FIR could have been lodged.

4. Section 276 of the Act of 1961 states that whosoever removes any property to be taken out of the purview of the Act shall be punishable with rigorous imprisonment which may extent to two years. According to the Petitioners, the Petitioners have not removed the property but have purchased it. The FIR also does not state that the Petitioners have removed the property. The FIR states that the property was removed by Mr.Chiman Patel with fraudulent intention to cheat the Revenue and the allegation is that the Petitioners conspired to do so. Therefore, the argument based on section 276 will be of no avail. The FIR states that Mr.Chiman Patel had full knowledge of the attachment. The FIR also states that the documentation of the attachment was pasted on the door. It is further stated and which is not disputed by the learned counsel for the Petitioners that the Petitioners are the residents of the locality, in

fact, of the same building. That being the position, *prima facie*, it cannot be said that the Petitioners were not aware of the attachment. Therefore, going even by the proviso to section 281 which states that the sale without notice of the proceedings would not be void, *prima facie*, it is not attracted in the facts of the case. Section 281 also is not a penal section but a declaratory section.

5. The scope of the petition before us is only to ascertain whether the ingredients of the offence have been made out. As above narration shows that they are made out as, *prima facie*, the Petitioners cannot be called as *bona fide* purchasers. Thus, the contentions of the Petitioners that they were not aware of the attachment and that they neither cheated the Revenue nor conspired with Mr.Chiman Patel are the matters of defence which the Petitioners have to establish in the trial.

6. Therefore, considering the limited scope of the extra ordinary jurisdiction to consider quashing of FIR, no case is made out for exercise of the same. Writ petition is rejected.

(SARANG V. KOTWAL, J.) (NITIN JAMDAR, J.)