

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION 89 OF 2021

Sau. Sangeeta Shankarlal Kabra,
aged about 52 yrs, Occ. Household,
r/o.Behind Akashwani Kendra,
Shastri Nagar, Akola, Tq. Dist. Akola

....**PETITIONER**

VERSUS

- 1) The State of Maharashtra,
through Police Station Officer,
Police Station, Ramdaspath,
Akola, Tah. Dist. Akola
- 2) Kishore Laxminarayan Gupta,
aged 60 yrs, Occ. Business,
r/o. Ramdaspath, Akola
Tq. Dist. Akola
- 3) The Manager,
Sanmitra Urban Co.op. Bank Ltd.
Branch Ramdaspath, Akola
Tq. Dist. Akola

.... **RESPONDENTS**

Mr. R.N. Ghuge, counsel for the petitioner.
Mr. S.S. Doifode, APP for respondent 1.

CORAM : ROHIT B. DEO, J.
DATE : 02.03.2021

ORAL JUDGMENT :

Heard Mr. R.N. Ghuge, the learned counsel for the
petitioner and Mr. S.S. Doifode, the learned APP for
respondent 1.

2. The petitioner contends that she and Mrs. Arundhati Diware entered into an agreement to purchase house 176 situated in Mouza Ramdaspeth, Akola from respondent 2 - Mr. Kishor Gupta, vide Earnest Note dated 5.7.1997.

3. The petitioner contends that she and Mrs. Arundhati Diware were constrained to prefer Special Civil Suit 296/1998 seeking decree of specific performance, which suit was decreed by the Joint Civil Judge Senior Division, Akola, vide judgment dated 27.6.2012. Respondent 2 was directed to execute the saledeed in favour of the petitioner and Mrs. Arundhati Diware.

4. The petitioner preferred complaint purportedly under sections 406, 418, 420, 464, 468, 471 read with section 34 of the Indian Penal Code ("IPC") and sought investigation under section 156(3) of the Code of Criminal Procedure ("Code") and direction to the police to register offence. The complaint alleges that Mr. Kishor Gupta did not disclose the factum of the decree and on the basis of false search report, mortgaged the property in favour of the respondent 3 - bank. Notably, the complaint is silent in

every material aspect, and does not disclose when the search report was allegedly obtained and financial assistance sought. The details of the mortgage and particularly the representations made therein, are suppressed.

5. The learned Magistrate refused to entertain the complaint and vide order dated 27.11.2018, rejected the application under section 156(3) of the Code. The learned Magistrate recorded a finding that the dispute is essentially civil in nature and the ingredients of the offence alleged, are not made out. Supplementing the reasons recorded by the learned Magistrate, the learned Sessions Judge, Akola, rejected the revision preferred by the petitioner.

6. I have perused the reasons recorded by the Courts below. I do not notice any error in the view taken concurrently.

7. Even if the allegations in the complaint are taken at face value, the ingredients of the offences are not made out. Be it noted, that the petitioner is admittedly not the owner of the property. The petitioner indeed has a decree of specific

performance in her favour and the learned counsel for the petitioner Mr. R.N. Ghuge states that the decree is confirmed in appeal. Be that as it may, admittedly, the sale deed is not executed and as of now Mr. Kishor Gupta is the owner of the property. That apart, it is inexplicable, how breach of trust is committed. Section 406 of IPC clearly does not come into play. Insofar as sections 418 and 420 of IPC are concerned, there is nothing on record to suggest that a false representation was made to the bank. Moreover, even if it is assumed, that a false representation was made in the sense that the applicant did not disclose the material facts to the bank, if any person is entitled to nurture a grievance, it would be the bank. The bank has no issues with the mortgage and the finance extended to Mr. Kishor Gupta. At least, there is nothing on record to so suggest. Sections 464, 468 and 471 of IPC do not come into play inasmuch as, no false document is prepared. Assuming that the search report can be found fault with, the search report cannot be considered as a false document. That the contents are incorrect is not sufficient to brand the document as a false document.

8. In any view of the matter, the petition is

substanceless, and is dismissed.

Judge

Belkhede