

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

CRIMINAL WRIT PETITION NO. 175 OF 2014

Nitin s/o Babarao Kadam,
Aged 45 yrs, occ- agriculturist,
Chhabada Plot, Amravati.

.... **Petitioner**

- **Versus** -

(1) State of Maharashtra,
Through, P.S.O. Badnera,
Tah. & Dist. Amravati.

(2) Rajendra s/o Bhagwan Jadhav,
Aged 46 yrs,
R/o Campapura, Old Town,
Badnera, Th & Distt. Amravati.

.... **Respondents**

Mr. Yogesh Nagpure, Advocate for the petitioner
Mr. S. S. Doifode, APP for the State/respondent no. 1
Mr. P. V. Navlani, Advocate for respondent no. 2

with

CRIMINAL APPLICATION (APL) NO. 208 OF 2014

Sau. Savita Ajabrao Dode,
Aged : 47 yrs. Occu. : Household,
R/o Near Hanuman Temple,
Ravi Nagar, Amravati, Dist. Amravati.

.... **Applicant**

- **Versus** -

(1) State of Maharashtra,
Through, P.S.O. Badnera,
Tah. & Dist. Amravati.

(2) Nitin Babarao Kadam,
Aged 47 yrs, Occu. : Agriculturist,
R/o Chhabada Plots, Amravati.
Dist. Amravati.

.... **Non-Applicants**

Mr. P. V. Navlani, Advocate for the applicant
Mr. S. S. Doifode, APP for the State/non-applicant no. 1
Mr. Yogesh Nagpure, Advocate for non-applicant no. 2

CORAM : ROHIT B. DEO, J.

DATED : 9TH FEBRUARY, 2021.

ORAL JUDGMENT

Criminal Writ Petition 175/2014 and Criminal Application (APL) 208/2014 are heard and decided by this common judgment since both assail the common judgment dated 21-12-2013 rendered by the Sessions Judge, Amravati in Criminal Revision No. 86/2012 and Criminal Revision No. 88/2012.

2. Mr. Nitin Babarao Kadam who is the petitioner in Criminal Writ Petition 175/2014 lodged report with the Badnera Police Station on the basis of which Crime 77/2010 was registered under Section 420 and 423 read with Section 34 of the Indian Penal Code (IPC). Mrs. Savita Dode who is the applicant in Criminal Application (APL) 208/2014 and Mr. Rajendra Jadhav were arraigned as accused. Culmination of the investigation resulted in submission of the final report in Regular Criminal Case 840/2010.

3. Mr. Rajendra Jadhav and Mrs. Savita Dode preferred applications, Exhibit 13 and Exhibit 21 respectively seeking discharge. The learned Magistrate was pleased to reject both the applications.

4. Mr. Rajendra Jadhav and Mrs. Savita Dode then approached the revisional court under Section 397 of the Code of Criminal Procedure, 1973 (Code) challenging the refusal of the learned Magistrate to discharge them from the offences. Vide judgment dated 21-12-2013 which is impugned herein, the revision preferred by Mr. Rajendra Jadhav is allowed and the revision preferred by Mrs. Savita Dode is rejected.

5. As noted supra, Mrs. Savita Dode is aggrieved since her discharge application is not considered favourably by the Courts below and Mr. Nitin Kadam is aggrieved to the extent Mr. Rajendra Jadhav is discharged.

6. It would be necessary to note certain facts which are discernible from the material placed on record along with the final report.

7. These facts and events are culled out in paragraph 5 of the judgment impugned which are as under :

1		Savita's mother was owner of the property S.No. 274/3, admeasuring 1H 62R,
2	10/03/2001	Savita (A-1) executed unregistered agreement to sell in favour of Rajendra (A-2) when she was not owner.
3	18/09/2001	Rajendra sent telegraphic notice to Savita.
4	24/12/2002	Savita's mother died and Savita became owner of the property.
5	06/03/2003	Savita executed registered Special Power of Attorney to Yogiraj to sell the suit property & to do all the relevant acts in connection therewith.
6	06/03/2003	Savita executed possession receipt and acknowledgment of receiving Rs. 9,50,000/- from him towards price of the field, S.No. 274/3 1H 62R.
7	04/04/2003	Rajendra issued notice to Savita
8	01/07/2003	Yogiraj sold the suit field to Chhaya Ghurde for Rs. 6,22,500/- on 30/06/2003. It's mutation recorded on 01/07/2003 and confirmed on 17/07/2003 page No. 55.
9	30/07/2003	Rajendra filed RCS No. 154/2003 against Savita for specific performance.
10	16/10/2003	Savita served, appeared, but did not file written statement and did not contest.
11	01/03/2004	Application to file written statement Exh. 12 rejected.
12	06/04/2004	Affidavit filed and the suit decreed.
13		Savita preferred no appeal.
14	28/04/2004	Savita filed R.C.S. No. 104/2004 against Yogiraj & Chhaya for declaration, injunction and possession. Savita admitted to have executed acknowledgment thereof. She mentioned about her transaction with Rajendra in the suit.
15	25/05/2004	Chhaya served with summons.

16	04/06/2004	Chhaya sold the field to Nitin and Prakash.
17	07/02/2005	Nitin and Prakash joined as parties
18		RCS 104/2004 was withdrawn in the year 2009 as Court executed the sale deed in favour of Rajendra.

8. Perusal of the report dated 14-5-2010 lodged by Mr. Nitin Kadam reveals that he purchased agriculture field Survey 274/03 from Mrs. Chhaya Ghurde vide registered sale deed dated 4-6-2004. The next statement in the report is that Mrs. Savita Dode was the owner of the said agriculture field having inherited the same from her mother and Mrs. Savita Dode executed power of attorney for consideration in favour of Mr. Yogiraj Thete. The attorney executed sale deed dated 30-6-2003 in favour of Mrs. Chhaya Ghurde and from her Mr. Nitin Kadam purchased the agriculture field. It is alleged that Mrs. Savita started lodging false complaint in connivance with Mr. Rajendra Jadhav. Mr. Nitin Kadam then makes a reference to spate of litigations including one instituted by Mrs. Savita impleading Mr. Yogiraj Thete and Mrs. Chhaya as defendants.

9. Perusal of the report indicates, even taking the entire report as factually correct, though there is no privity of contract between Mrs. Savita Dode or Mr. Rajendra Jadhav on one hand and

Mr. Nitin Kadam on the other. Neither Mrs. Savita Dode nor Mr. Rajendra Jadhav made out any representation whatsoever to Mr. Nitin Kadam who purchased agriculture field from Mrs. Chhaya. Notably, Mr. Nitin Kadam has no grievance against Mrs. Chhaya since he did not name her as the accused nor did he attribute any wrongdoing to her. It is, therefore, clear that even if the material in the final report is taken at face value, it cannot be said that there is a case to proceed against Mrs. Savita Dode or Mr. Rajendra Jadhav for offences punishable under Sections 420 and 423 read with Section 34 of the IPC.

10. The learned Sessions Judge was right in ordering discharge of Mr. Rajendra Jadhav. However, the learned Sessions Judge did not show the same indulgence in favour of Mrs. Savita Dode and the reasons which are given by learned Sessions Judge not to discharge Mrs. Savita are discernible in paragraphs 17 and 19 of the judgment which read thus :

17] It is not possible that the prices of the field could have gone down during the said period. Savita has certainly shown criminal mind. She entered into agreement to sale with Rajendra and she concealed the said fact and obtained consideration after executing power of attorney in favour of

Yogiraj and Yogiraj sold the same property to Chhaya. Savita did not disclose these subsequent events though aware thereof. When she appeared in the suit filed by Rajendra for selling one property to two persons, she allowed the decree to be passed in favour of Rajendra and allowed him to obtain sale deed from the court in spite of the fact that she was aware that she was not the owner of the property, and the property was already purchased by Chhaya through Yogiraj and it was sold by Chhaya to others. She was present before the Revenue Authorities, when mutations were effected in favour of Nitin and Prakash.

19] Cheating can be committed by act of dishonest misappropriation as well as by omission by dishonest silence. If there would have been conspiracy between Rajendra and Savita, Savita would have executed sale deed in his favour at the earliest, but Rajendra was required to file a suit and even after ex-parte decree he required lot of time to obtain the sale deed from Savita. He paid part of consideration in the court itself. The informant Nitin and others have no personal knowledge about the agreement to sell executed in favour of Rajendra by Savita. I do not agree that the material on record is sufficient to hold that it was a fake agreement. If the sale deed would have been executed in favour of Chhaya and thereafter the agreement would have been executed in favour of Rajendra, one can understand the case of fraud or cheating. But, when the agreement with Rajendra was earlier and he had even obtained a decree from the Court, no criminal elements can be attributed to Rajendra in the entire episode.

11. Notably, the learned Sessions Judge rightly observes that if Nitin was cheated by anybody, it was by Mrs. Chhaya since it was

Mrs. Chhaya who made the representation, if any, that the agricultural field is free from dispute. It is on this logic that Mr. Rajendra Jadhav is discharged. The learned Sessions Judge further observes that Mrs. Savita Dode did not disclose the subsequent events and after she appeared in the suit instituted by Mr. Rajendra Jadhav, she allowed the decree to be passed in favour of Mr. Rajendra Jadhav and allowed him to obtain sale deed from the Court despite the fact that she was aware that she was not the owner of the property and that the property was already purchased by Mrs. Chhaya.

12. It is extremely difficult to agree with the reasons recorded by the learned Sessions Judge. Mrs. Savita Dode made no representation whatsoever to Mr. Nitin Kadam. Indeed, it is not even the case of the prosecution that Mrs. Savita Dode and Mr. Nitin Kadam ever interacted, much less, face to face. The role attributed to Mrs. Savita Dode appears to be speculative. Be that as it may, even if, it is assumed that Mrs. Savita and Mr. Rajendra Jadhav colluded and she facilitated the passing of the decree in favour of Rajendra Jadhav, it is inexplicable how Mrs. Savita Dode can be alleged to have cheated Mr. Nitin Kadam. The reasoning of the learned Sessions

Judge is clearly convoluted.

13. The law is well settled. A limited shifting of material to ascertain the need or justification to proceed against the accused is permissible even at the stage of discharge. Reference may be made to the following observations of the Apex Court in ***Dipakbhai Jagdishchandra Patel vs. State of Gujarat, [(2019) 16 SCC 547]***.

“23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.”

14. In ***State (NCT of Delhi) v. Shiv Charan Bansal, [(2020) 2 SCC 290]***, the Supreme Court articulates thus :

*“39. The Court while considering the question of framing charges under **Section 227** of the Cr.PC has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case has been made out against the accused. The test to determine prima facie case would depend upon the facts of each case. If the material placed before the court discloses grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing charges and proceeding with the trial. The probative value of the evidence brought on record cannot be gone into at the stage of framing charges. The Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the ingredients constituting the alleged offence. At this stage, there cannot be a roving enquiry into the pros and cons of the matter; the evidence is not to be weighed as if a trial is being conducted. Reliance is placed on the judgment of this Court in *State of Bihar v. Ramesh Singh* where it has been held that at the stage of framing charges under Sections 227 and 228 CrPC, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused had committed the offence, then the court should proceed with the trial.”*

15. Testing the judgment impugned on the anvil of the settled law, Mrs. Savita is entitled to discharge. Mr. Rajendra Jadhav is also entitled to discharge and the petition preferred by Mr. Nitin Kadam deserves rejection.

16. Criminal Application (APL) 208/2014 is allowed and the applicant is discharged from offences punishable under Sections 420 and 423 read with Section 34 of the Indian Penal Code in Regular Criminal Case 840/2010.

17. Criminal Writ Petition 175/2014 preferred by Mr. Nitin Kadam challenging the discharge order in favour of Mr. Rajendra Jadhav is rejected.

JUDGE

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