

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.571 OF 2020

Sureshkumar s/o Kisanchand Tanwani

Vs.

State of Maharashtra through Ministry of Home Affairs, Mantralaya Mumbai – 400 032 and
others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S. V. Bhutada, Advocate for petitioner.
Shri S. M. Ghodeswar, APP for respondents.

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATED : 03/03/2021

Heard Shri Bhutada, learned counsel for the
petitioner.

2. By this petition, the petitioner who has filed a complaint against two persons namely, Shammi Mamtani and Mahendra Negi, partners of Ambika Firm, alleging that they have cheated the petitioner, is seeking a direction to Dhantoli police for registering the FIR for offences of cheating, misappropriation and criminal breach of trust read with Section 34 of the Indian Penal Code.

3. It is seen that some preliminary enquiry was made by the Investigating Officer and he found that although there use to be executed between the petitioner and the two persons named in the complaint agreement to sell from time to time, basically, the transaction was of different nature whereby, the parties had started a business of sale and purchase of immovable properties on regular basis which was also a pseudo sale and earned some profits. The Investigating Officer examined the statements of accounts of the parties for last 7 to 8 years and he noticed that each of the parties owed some or the other amount to the other parties. He also found during his preliminary enquiry that complaints filed under Section 138 of the Negotiable Instruments Act are pending before the concerned criminal Courts. Thus, he concluded that the basic transactions between the parties were of some financial nature and disclosed commission of non cognizable offence. He therefore, concluded that the dispute was of civil nature and accordingly by his communication dated 30.09.2020, he informed the petitioner that this complaint was filed, giving a choice to approach the Civil Court for appropriate relief.

4. The petitioner has also challenged the correctness of the above referred communication of the Investigating Officer in the present petition.

5. On going through the allegations made in the complaint and also upon examination of the agreement to sell, copies of which are filed on record, we cannot but agree with the conclusions reached in the matter by the Investigating Officer. The nature of transactions actually revealed by the agreement to sell was of only sharing of profits by the parties to the agreement which would accrue to the parties due to rise in prices of the real estate from time to time. Thus, these agreements to sale represented only pseudo sale transactions and were actually about sharing of profits between the parties. These are the facts which are revealed quite clearly by the averments made in the complaint itself and they can also be seen from the terms of the agreement to sell reached between the parties. There are similar averments made even in the complaints filed by the petitioner under Section 138 of the

Negotiable Instruments Act against the aforesaid two persons and which are presently pending before the concerned criminal Court. These transactions are nothing but the transactions of pseudo sale and the intention was not really to become owner of the immovable properties but to enrich oneself because of propensity of the business of real estate, to scale the upward graph of prices.

6. In the circumstances, we find no merit in this petition, the complaints does not *prima facie* disclose commission of any cognizable offence. No fault could be found with the impugned communication.

The petition stands dismissed.

JUDGE

JUDGE