

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

CRIMINAL APPLICATION [ABA] NO. 610/2021.

Sanjay Ramdasji Chore and another.

-Versus-

State of Maharashtra through P.O. Pardi, Nagpur.

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

Court's or Judge's orders

Ms. Sheeba Thakur, Advocate for Applicants.
Shri H.D. Dubey, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : OCTOBER 27, 2021

Heard.

2. Applicants are seeking pre-arrest protection in connection with Crime No.445/2021 registered with the Non-applicant – Pardi Police Station, Nagpur for the offence punishable under Sections 420, 406, 409, 465, 467, 468, 471 and 120 of the Indian Penal Code.

3. It is prosecution case that applicants have entered into an agreement for sale of a piece of land at Khasra No.869/1, situated at village Tarsa, Tahsil Mouda, District Nagpur. Applicants have received total consideration of Rs.10,85,000/-, however,

avoided to execute sale deed, hence the report.

4. Learned Counsel for applicants would submit that the entire transaction is of civil nature for which already a civil suit is pending. According to applicants, due to refusal of original owner to execute sale deed, they were unable to perform the promise given to the informant, and therefore, no criminal liability could be fastened.

5. It reveals that one Chandrabhan Deshmukh was the original owner of the land bearing Khasra No.869/1. Applicants have entered into an agreement of sale with the original owner Chandrabhan in the year 2014. The said agreement itself authorizes applicants to prepare a layout plan, get it sanctioned and particularly to execute agreement in favour of the prospective plot purchasers. On the strength of said recital, it is argued that applicant no.1 – Sanjay is an ostensible owner, and pursuant to the authority given under the agreement, he has taken necessary steps.

6. It is brought to the notice of this Court that applicants have already filed Special Civil Suit No.605/2016, against the original owners for specific

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performance of contract, which is still pending. As applicants could not execute sale deed, they have returned partial amount of Rs.3 lakhs to the informant of which acknowledgment is produced.

7. All the breach of promises cannot be termed as an offence of cheating. In order to constitute an offence there has to be a deceitful intention from inception. The chain of transaction discloses that applicants acquired the right in respect of larger piece of land under agreement, they got authority to prepare layout and also enter into agreement for sale of plots. However, due to subsequent dispute raised with the original owner, the sale deed could not be executed, which has become a hurdle in performing the remaining part of contract with the informant.

8. Prima facie essential ingredients to demonstrate intention to cheat are missing, hence, a case is made out to protect liberty. In view of that, following order is passed.

(i) Criminal Application is allowed and disposed of.

(ii) In the event of arrest of

applicants/accused Sanjay Ramdasji Chore and Seems Sanjay Chore in connection with Crime No.445/2021 registered with the Non-applicant – Pardi Police Station, Nagpur for the offence punishable under Sections 420, 406, 409, 465, 467, 468, 471 and 120 of the Indian Penal Code, they be released on bail on their executing P.R. Bond in the sum of Rs.25,000/- each with one surety in the like amount.

- (iii) Applicants/accused to attend the concerned police station on every Sunday in between 12 noon to 2 p.m. till the filing of the charge sheet or 90 days, whichever is earlier.
- (iv) Applicants/accused shall not tamper with the prosecution evidence in any manner.
- (v) Misc. applications, if any, stands disposed of.

JUDGE

Rgd.