

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

CRIMINAL APPLICATION (APL) NO. 921/2015

Shri Chandan Bhagtram Motwani,
Aged about 37 yrs., Occ. Business,
R/o. Yashwant Nagar,
Hinganghat, Distt. Wardha.

APPLICANT

---VERSUS---

1. The State of Maharashtra,
through its Police Station Officer,
Hinganghat, Tah. Hinganghat,
Distt. Wardha.

2. Sau. Manisha Lalchandji Jeswani,
Aged 44 yrs, Occ. : Housewife,
R/o. Vinayak Choudhari Ward,
Hinganghat, Distt. Wardha.

NON-APPLICANTS.

Shri M.D.Roy, Advocate h/f Shri Manoj P. Kariya, Advocate for the applicant.

Shri N.S. Rao, APP for the non-applicant no.1.

CORAM: Z. A. HAQ AND
AMIT B. BORKAR, JJ.
DATED: 9.3.2021

ORAL JUDGMENT (PER : AMIT B. BORKAR, J.) :

1. By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant has challenged registration of First Information Report No.302/2015 filed with the

non-applicant no.1 - Police Station dated 14.1.2015 registered with the non-applicant no.1 - Police Station for offence punishable under Section 420 of the Indian Penal Code.

2. The First Information Report came to be lodged against the applicant with the accusations that the applicant entered into an Agreement to Sale with the non-applicant no.2. It is alleged that the non-applicant no.2 paid an amount of Rs. Twenty lakhs in cash to the applicant. It is alleged that the applicant did not execute Sale-deed in favour of the non-applicant no.2 nor repaid the earnest amount and, therefore, the applicant cheated the non-applicant no.2.

3. The applicant has, therefore, filed present application challenging the registration of the First Information Report. This Court, on 16.03.2016 issued notice to the non-applicants and on 15.2.2017, this Court issued Rule and granted interim relief in terms of prayer clause (b).

4. The non-applicant no.1, in pursuance of the notice of this Court, filed reply and stated that the one Pradipkumar Hemnani, was witness before whom the applicant and the non-applicant no.2 entered into an agreement and paid an amount. Henmani in his statement stated that non-applicant no.2 was not

inclined to purchase the property in question and told the applicant to find another purchaser. It is further stated that the applicant repaid an amount of Rs. Twenty eight lakhs to the husband of the non-applicant no.2 by selling property in dispute in favour of one Brijratan Pandia.

5. The non-applicant no.1 on 23.11.2016 filed additional reply and has stated that the original owner of the property in Shri Shankar Wanjari stated that the applicant had met him and told him to execute Sale-deed of the land in question in favour of Vajratan Bhatiya and accordingly Sale-deed of the said property was executed in favour of Shri Pandia on 3.3.2015.

6. The non-applicant no.2 was served with notice of this Court and engaged an Advocate, but the advocate was not present on 3.3.2021. Therefore, the matter was adjourned to 8.3.2021. On 8.3.2021 also Advocate for the non-applicant no.2 was absent and, therefore, the matter was adjourned for today i.e. 9.3.2021. Today also Advocate for the non-applicant no.2 is absent. Therefore, we are proceeding to decide the present matter on merits.

7. On perusal of the First Information Report and considering the additional reply filed by the non-applicant no.1, it

appears that the purchaser of the land Shri Pandia has paid Rs. Eighteen lakhs to the non-applicant no.2. It appears that the First Information Report has been registered after period of seven months. Taking into consideration the allegations in the First Information Report and reply filed by the non-applicant no.1, we are satisfied that the prosecution has failed to bring on record material that the applicant dishonestly induced the non-applicant no.2 to part with his property. We are therefore satisfied that continuance of the present proceedings against the applicant would amount to abuse of process of Court. We, therefore, pass the following order:

ORDER

First Information Report No.302/2015 registered against the applicant under Section 420 of the Indian Penal Code is quashed and set aside.

Rule is made absolute in the above terms.

JUDGE

JUDGE