

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

CRIMINAL APPLICATION (APL) NO.894 OF 2016

Sau. Varsha Minesh Kathale
Aged about 39 yrs.,
Occ: Housewife,
R/o Vafai, Tah. Ner,
District Yavatmal.

..... **APPLICANT**

...VERSUS...

1. Sau. Asha w/o Ravindr Ajmire
Aged about 47 yrs.,
Occ: Service, R/o Peshave Plot,
Yavatmal, Tah. & Dist. Yavatmal.

2. The State of Maharashtra,
through P.S.O. Yavatmal,
Dist. Yavatmal.

..... **NON-APPLICANTS**

Mr. Shashibhushan Wahane, Advocate for Applicant.
Mr. M.K. Pathan, APP for Non-Applicant 2/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **10th MARCH, 2021.**

ORAL JUDGMENT:

The applicant instituted Regular Criminal Case 250/2013 for offences punishable under Sections 467, 468, 477, 477-A, 420 and 120-B read with Section 34 of the Indian Penal Code arraigning as many as seven accused.

2. The learned Magistrate took cognizance of the complaint and issued process vide order dated 23.04.2013.

3. Non-Applicant 1, who is arraigned as accused 7 was dissatisfied with the order of issuance of process. She preferred Criminal Revision 79/2013, which is allowed by the Sessions Judge, Yavatmal vide judgment dated 05.10.2016. The learned Sessions Judge, set aside the order of issuance of process as against non-applicant 1 – accused 7 and directed the trial court to make further inquiry, either personally or through police and then to decide the issue on merits.

4. The applicant, who shall be referred to as the complainant hereinafter, is invoking this court writ jurisdiction primarily on the ground that the learned Sessions Judge committed a serious error in setting aside the order of issuance of process particularly since the learned Sessions Judge referred to and relied upon the documents placed on record by the accused in the revision proceeding.

5. Mr. Shashibhushan Wahane would submit, that the scope of inquiry under Section 397 of the Criminal Procedure Code, 1973 (Code) is extremely limited and the learned

Magistrate having found a case to proceed, the learned Sessions Judge erred in interfering.

6. I have given due consideration to the submission advanced by the learned counsel Mr. Shashibhushan Wahane.

7. The gist of the complaint which is preferred, is that the complainant and other similarly situated persons were persuaded and/or induced to part with substantial amounts, by accused 1 who is a builder and estate broker. The complainant alleges that accused 1 was not the owner of plot 4-B which belongs to the Om Co-operative Housing Society and was merely an allottee. The plot was allotted to accused 1 for residential purpose and not for commercial purpose. Accused 1 fabricated permission purportedly given by the Wadgaon Gram Panchayat and availed finance of Rs.50,00,000/- (Rupees Fifty lacs only) from accused 2 for construction of building comprising three floors and 42 shops. The allegation is that accused 2 sanctioned the finance without verifying the title deed. The next allegation is that accused 1 failed to pay the loan to accused 2 and yet no action was initiated by accused 2. It appears from the complaint that the complainant was allotted shop-7 by accused 1. The grievance is that although the complainant paid

Rs.3,51,000/- as consideration and the sale-deed of the said shop block was duly executed on 23.06.2006, the Talathi refused to mutate the name of the complainant as owner of shop-7 on the ground that plot 4/B is recorded in the name of Om Society.

8. In so far as the non-applicant 1 – accused 7 is concerned, the allegation in the complaint is that she purchased shop-7 from accused 2 Bank which took illegal possession of the shop block although she was aware that there was a dispute pending in the competent court concerning the said shop block.

9. The learned Sessions Judge has recorded a finding, and which finding is unexceptionable, that the non-applicant 1 – accused 7 purchased the shop block-7 from the Yavatmal Urban Co-operative Bank Limited, Yavatmal since she emerged successful in the auction process. It is noted that the bank took possession of shop-7 under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and then was auctioned the same.

11. In my considered view, the order of the learned Sessions Judge takes a correct view. Even in revision, unimpeachable or incontrovertible material in public domain can

be taken note of. Even if it is assumed *arguendo*, that the learned counsel Mr. Shashibhushan Wahane is justified in the submission that the learned Sessions Judge could not have considered the documents placed before him, even keeping out of the consideration the said documents, and taking the allegations in the complaint at face value, it is apparent that there is no privity of contract whatsoever between the complainant and accused 7. The grievance of the complainant is primarily against the builder and the bank. Accused 7 has purchased the property from the bank. In this view of the matter, the learned Magistrate committed serious error in issuing the process in a mechanical manner, at least as regards non-applicant 1 – accused 7. When the process was issued, the learned Magistrate did not have any material to *prima facie* make out a case for proceeding against accused 7. In any event, all that is done by the Revisional Court is to direct the learned Magistrate to inquire further. No prejudice is caused, as such, to the complainant.

12. I do not see any reason to exercise inherent power. The application is dismissed.

JUDGE