

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

CRIMINAL APPLICATION (APL) NO. 1353/2019

APPLICANT : Anil Krishnarao Deshpande,
aged about 58 years, Occ. Business,
R/o. 40, Pawan Bhumi, Somalwada, Wardha
Road, Nagpur, a partner in
Riddhamaan Buildcon Company, Police Station
Sonegaon, P.S. Nagpur.

...VERSUS...

NON-APPLICANTS: 1. Mrs. Shweta Vaibhav Sant,
aged about 45 years, Occ. Business,
R/o. Nav-Shayadri Society, Pune-52

2. Mr. Ganesh Shivajirao Misal,
aged about 47 years, Occ. Business,
R/o. Flat No. A2/104, Gangadham
Phase-II, Bibvewadi.

3. Mr. Dipak Vishwanath Dahale,
aged about 53 years, Occ. Business,
R/o. B-16, Todkar Garden, Bibvewadi,
Kondhwa Road, Pune.

4. Mr. Kedar Shashikant Tokekar,
aged about 38 years, Occ. Business,
R/o. 117, Shukarwar Peth, Krishna
Complex, Pune.

Non applicant Nos. 1 to 4 are partners in
M/s. PHINIX Developers, 'PHINIX' House,
Plot No. 32/1/2, Erandawane, Pune

5. Mr. Rajkawal R. Batra,
aged about 59 years, Occ. Business,
R/o. B-102, Latitude New Heaven Park - II
SN - 18/6 Khurd, NIBM Road, Pune.

6. State of Maharashtra,
through Police Station Officer,
Police Station Sonegaon, Nagpur.

AND
CRIMINAL APPLICATION (APL) NO. 1355/2019

APPLICANT : Anil Krishnarao Deshpande,
aged about 58 years, Occ. Business,
Permanent R/o. 40, Pawan Bhumi, Somalwada,
Wardha Road, Nagpur, a partner in
Riddhamaan Buildcon Company, Police Station
Sonegaon, P.S. Nagpur.

...VERSUS...

NON-APPLICANTS:

1. Mr. Vaibhav Sant,
aged about 47 years, Occ. Business,
R/o. Nav-Shayadri Society, Pune-52
(Partner of Phinix Constructions), Office
Address : PHINIX House, Plot No. 32/1/2,
Erandawane, Pune

2. Mrs. Shweta Sant w/o Vaibhav Sant,
aged about 45 years, Occ. Business,
R/o. Nav-Shayadri Society, Pune-52
(Partner of Phinix Constructions), Office
Address : PHINIX House, Plot No. 32/1/2,
Erandawane, Pune

3. State of Maharashtra,
through Police Station Officer,
Police Station Sonegaon, Nagpur.

Shri A.O.Shriwas, Advocate for applicant
Shri A.A.Bansod, Advocate for Respondent Nos. 1 to 4
Shri R.M.Patwardhan, Advocate for Respondent No. 5
Shri S.D.Shirpurkar, APP for Non-applicant No.6 - State

CORAM : MANISH PITALE, J.

DATE : 02/08/2021.

1] Heard learned counsel for the applicants in both the applications.

Admit.

Learned counsel Mr. A.A.Bansod appearing on behalf of Respondent Nos. 1 to 4, Mr. R.M. Patwardhan, learned counsel appearing on behalf of Respondent No.5 and learned APP appearing on behalf of the Respondent No.6 - State waive notice.

2] These two applications have been filed by the same applicant and he is aggrieved by the concurrent orders passed by the Judicial Magistrate, First Class, Nagpur and the Court of Additional Sessions Judge, at Nagpur. The applicant had filed applications under Section 156(3) of Code of Criminal Procedure (Cr.P.C.) against the respondents herein for registration of offences under

Section 420 r/w Section 120B of the Indian Penal Code (I.P.C.) in one application and under Sections 420, 406 r/w Section 120B of I.P.C. in the other application. The two Courts have held against the applicant on the grounds, firstly, that the grievance of the applicant is of civil nature and no criminal proceedings could be initiated and secondly, the proceedings could not have been initiated at Nagpur.

3] The grievance of the applicant in Criminal Application (APL) No. 1353/2019 is that, a partnership firm namely Riddhimaan Buildcon Company, of which the applicant is the partner, had entered into a development agreement with the respondents herein. It was the grievance of the applicant that despite payment of amount to the tune of Rs.80 lakhs to the respondents, they failed to abide by specific obligations stated in the development agreement. It was the case of the applicant that the respondents did this act of cheating intentionally and that, they intended to deceive the applicant, right from the beginning.

4] The grievance of the applicant in Criminal Application (APL) No. 1355/2019, is based on an alleged oral agreement

between the applicant and the respondents therein, pertaining to providing office space to the applicant in the property in question. According to the applicant, he parted with an amount of Rs.15 lakhs and yet the respondents did not abide by their obligation under the oral agreement.

5] According to the applicant, he had approached the concerned Police Station at Nagpur with a grievance for registration of offence against the respondents. When no action was taken in the matter by the concerned Police Station, he was constrained to approach the Commissioner of Police with his grievance. Thereafter, when no precipitate action was taken in the matter, he was constrained to file application under Section 156(3) of Cr.P.C. for registration of offence against the respondents in respect of his grievance.

6] By orders dated 16.01.2019 and 03.04.2019, the Magistrate rejected the applications filed by the applicant on the two grounds mentioned above. Aggrieved by the same, the applicant filed revision applications before the Sessions Court. By impugned

judgments and orders dated 08.08.2019, the Court of Ad-hoc District Judge-2 and Additional Sessions Judge, Nagpur, dismissed the revision applications, thereby upholding the orders passed by the Magistrate.

7] Aggrieved by the same, the applicant filed the present applications. Mr. A.O.Shriwas, learned counsel for the applicant submitted that the Court of Magistrate as well as the Sessions Court committed a grave error in rejecting the applications filed under Section 156(3) of Cr.P.C. It was submitted that a given set of facts placed before the Court can give rise to both civil and criminal proceedings, which the Courts below failed to appreciate. It was submitted that in the complaint itself, the applicant had vividly described how respondent No. 2, from the very beginning had acted in a particular manner to cheat the applicant and that *prima facie* case for initiation of criminal proceeding was certainly made out in the facts and circumstances of the present case. It is further submitted that on the question of jurisdiction also, the Courts below erred, for the reason that under Section 179 of Cr.P.C., criminal proceedings could be initiated where the consequence of the alleged

act had ensued, which in the present case, was financial loss suffered by the applicant at Nagpur. The learned counsel placed reliance on the judgments of the Supreme Court in the case of *Arun Bhandari vrs. State of U.P and others*, reported in (2013) 2 SCC 801, *Lee Kun Hee, President, Samsung Corporation and others vrs. State of U.P and others*, reported in (2013) 3 SCC 132, *Rhea Chakraborty vrs. State of Bihar and others*, reported in 2020 SCC Online SC 654 and *Kaushik Chatterjee vrs. State of Haryana and others*, reported in (2020) 10 SCC 92.

8] On the other hand, Mr. Patwardhan, learned counsel appearing for the contesting respondents submitted that although no serious dispute could be raised regarding the proposition that a given set of facts could give rise to criminal and civil proceedings, in the present case, it was worth nothing that while the development agreement was executed as far back as in the year 2011 at Pune, the applicant chose to approach the Police Station at Nagpur in the year 2018 and thereafter filed the applications under Section 156(3) of Cr.P.C., in the year 2018 at Nagpur. It was then submitted that even according to the statements made in the

complaint and the documents relied upon by the applicant, including the aforesaid development agreement dated 09.09.2011, no part of the transaction had taken place at Nagpur. The partnership firm, of which the applicant is a partner, is registered at Pune. The development agreement was executed at Pune and all the payments, even according to the allegations leveled by the applicant, were made at Pune itself. It was submitted that the applicant was not entitled to invoke the jurisdiction of the Court of Magistrate at Nagpur on the premise that he had suffered financial loss at Nagpur. The learned counsel for the contesting respondents did not dispute the position of law as laid down in the aforementioned judgments, relied upon by the learned counsel for the applicant, but he submitted that the ratio of the said judgments could not come to the benefit of the applicant.

9] Shri S.D.Shirpurkar, learned APP appeared for the respondent- State.

10] Heard learned counsel for the rival parties and perused the material on record. The Courts below have held against the

applicant on two grounds. Firstly, that the grievance raised by the applicant was purely of civil nature and that no criminal proceedings could be initiated in the facts and circumstances of the present case. Secondly, that the jurisdiction of the Court at Nagpur could not be initiated and no investigation could be undertaken by the Police at Nagpur, for the reason that even if the statements of the applicant were to be accepted as it is, the entire transaction and its consequences had ensued in Pune.

11] As regards the first ground pertaining to the grievance of the applicant being of purely civil nature, the learned counsel appearing for the applicant is justified in relying upon the position of law laid down and reiterated by the Supreme Court in case of *Arun Bhandari vrs. State of U.P* (supra). It is specifically held in paragraph 26 thereof that although a transaction appeared to be of civil or commercial nature, it may also contain ingredients of criminal offences. In this regard, perusal of the two complaints filed by the applicant would show that, it was stated therein that the respondents had acted in a particular manner to the detriment of the applicant right from the beginning, to cause financial loss to

him. It is specifically stated that the respondents acted in a manner to deceive the applicant to part with huge amounts of money, thereby indicating ingredients of offences under Sections 420 and 406 of the I.P.C.. Considering the nature of allegations leveled by the applicant and the law laid down in that regard in various judgments of the Hon'ble Supreme Court, the Courts below committed an error in holding that the grievance of the applicant was of purely a civil nature and that, therefore, the applications under Section 156(3) of Cr.P.C. could not be entertained. To that extent the impugned judgments and orders passed by the Magistrate and the Sessions Court, which are subject matter of challenge in these two applications before this Court, are found to be erroneous.

12] As regards the second aspect of the matter pertaining to the question as to whether the police machinery at Nagpur could be activated to register offences against the respondents and consequently, whether the Court of the Magistrate at Nagpur could entertain and pass appropriate orders on the applications filed under Section 156(3) of Cr.P.C., it needs to be examined on the basis of the documents on record, as to whether any part of the

transactions or consequences of the transactions alleged by the applicant occurred at Nagpur. A perusal of development agreement dated 09.09.2011, placed on record along with Criminal Application (APL) No. 1353 of 2019, would show that the registered agreement was executed at Pune. The respondents as well as the registered partnership firm, of which the applicant is a partner, are shown to be having their addresses at Pune. It is undisputed that the said partnership of which the applicant is a partner and on that basis filed the applications under Section 156(3) of Cr.P.C., is a firm registered at Pune. The contents of the said development agreement show that the amounts allegedly paid by the applicant to the respondents on various dates, were paid at Pune. Similarly, the grievance raised in the Criminal Application (APL) No. 1355 of 2019, would show that there was allegedly an oral agreement between the parties and that the applicant had parted with amount of Rs. 15 lakhs for office premises situated at Pune.

13] Therefore, on a conjoint reading of the applications filed under Section 156(3) of Cr.P.C. with the documents available on record, going by the grievance projected on behalf of the

applicant, it is clear that the police authorities at Nagpur would not have been able to initiate investigation at the behest of the applicant for the alleged offences committed by the respondents. For the same reason, the applications filed on behalf of the applicant before the Court of Magistrate at Nagpur were also misplaced and they could not have been entertained. The Magistrate, in the order rejecting the applications filed by the applicant, specifically found that the police machinery at Nagpur could not have been activated to investigate a transaction that admittedly took place at Pune.

14] The contention raised on behalf of the applicant that since financial loss suffered as a consequence ensued at Nagpur is wholly untenable in the facts and circumstances of the present case. This is because the partnership firm of which the applicant is a partner and who had entered into the aforesaid development agreement, is also a firm registered at Pune for development of property located at Pune, in respect of which all the payments were allegedly made at Pune itself.

15] Therefore, applying the position of law laid down by the Hon'ble Supreme Court in case of *Lee Kun Hee vrs. State of U.P* (supra), *Rhea Chakraborty vrs. State of Bihar and others*, and *Kaushik Chatterjee vrs. State of Haryana and others* (supra), no fault can be found with the findings recorded by the Courts below on the aforesaid second aspect of the matter.

16] In view of the above, the applications are dismissed.

17] Rule is discharged. No order as to costs.

JUDGE

Rvjalit