

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.341 OF 2020

**SAHEBRAO LAXMANRAO AHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

....
Ms. M.V. Narwade, Advocate for the Petitioner
Mr. G.O. Wattamwar, APP for Respondent No.1/State
....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 26 AUGUST, 2022

PER COURT:-

1. The petitioner has challenged the order passed by the learned Judicial Magistrate, First Class, Shrirampur in R.C.C. No.61 of 2016 dated 10.03.2017 and confirmed in criminal revision application No. 10 of 2017 by the learned Additional Sessions Judge, Shrirampur.

2. Heard Ms. M.V. Narwade, learned counsel for the petitioner/original complainant and Mr. Wattamwar, learned APP for respondent No.1/State at length.

3. Ms. Narwade, learned counsel for the petitioner invited my attention to the impugned order passed by the learned Additional Sessions Judge, Shrirampur in criminal

revision application No. 10 of 2017. She submitted that the order passed by the learned Additional Sessions Judge confirming the order of the learned Judicial Magistrate, First Class is erroneous and bad in law. She submitted that it is a clear case of cheating and criminal breach of trust. The respondents/original accused, though knowing about the earlier agreement for sale between the petitioner and the father of respondent Nos. 2 to 6, they had executed the sale deed in favour of original accused No.7. It is nothing but a case of cheating and criminal breach of trust, all these aspects were overlooked by the revisional court as well as the learned Magistrate. She submitted that the both the courts below have committed an error in observing the dispute as civil nature. She, therefore, urged that both the orders may be quashed and set aside.

3. Having regard to the submissions of both the sides, I have gone through the order below exhibit 1 in R.C.C. No.61 of 2016 passed by the learned Judicature Magistrate, Shrirampur as well as the order passed by the Additional Sessions Judge, Shrirampur in criminal revision application o.10 of 2017 dated 10.07.2019. It is revealed during the course of argument that there was a registered agreement

for sale between the petitioner and Madhav Balwant Shelar (since deceased) in respect of 40 R land out of Gut No. 157. After the demise of Madhav Balwant Shelar, the original accused Nos. 1 to 5, who happen to be the legal heirs of Madhav Shelar had executed the sale deed in favour of original accused No.6. Even for the sake of moment, it is accepted that the original accused Nos. 1 to 5 though knowing about the earlier agreement for sale between the parties, it is difficult to attract the offence of cheating. Admittedly, they were not party to the agreement for sale. Having considered the allegations levelled against the original accused and even taken at their face value and accepted in their entirety, it is difficult to attract Sections 420 and 406 of the Indian Penal Code.

5. The dispute appears to be of a civil nature between the parties. The learned Magistrate as well as the learned Additional Sessions Judge have considered these aspects. Both the courts below have also considered the aspect that the sale deed was executed in the year 1995 and the private complaint came to be lodged in the year 2016 even though reason of illness of the petitioner has put forth. It is difficult to accept the case of cheating and criminal breach of trust,

even though the allegations levelled in the private complaint are taken at their face value.

6. Having regard to the above reasons and discussion, I do not see any error in the impugned order passed by the learned Judicial Magistrate, First Class, which is confirmed in the criminal revision application. As such, no interference is called for.

ORDER

- (i) The criminal writ petition stands dismissed.
- (ii) No order as to costs.

[**SHRIKANT D. KULKARNI**]
JUDGE

S.P Rane