

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO. 287 OF 2022

Sujata Farms Pvt. Ltd. Company
Through its Director
Jayant Ramchandra Mhalgi & Ors.

...Petitioners

Versus

Lt. Commander Pramod Dattatraya
Mahajan & Anr.

...Respondents

Mr. Tapan Thatte a/w Mr. Shantanu Adkar and Mr. Ateet Mahambrey for
the Petitioners

Mr. Angad Singh Gill a/w Mr. I. S. Gill for the Respondent No.1

Ms. Anamika Malhotra, A.P.P for the Respondent No.2–State

CORAM : REVATI MOHITE DERE, J.
MONDAY, 21st MARCH 2022

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioner has impugned the orders dated
28th February 2020 passed by the learned Judicial Magistrate at Pune below

Exhibit 1 in RCC No. 822/2020 (earlier Cri. MA 4193/2019), by which the learned Judge issued process as against the petitioner for the alleged offence punishable under Section 420 r/w 34 of the Indian Penal Code. In addition to the said order, the petitioners have also impugned the order dated 17th December 2021 passed by the learned Sessions Judge at Pune in Criminal Revision Application No. 140/2020, by which the petitioner's revision application came to be dismissed and as such the order of issue process came to be confirmed.

3 It is the complainant's case that after his retirement from the the Indian Navy, he settled in Pune and was in search of a land for constructing his own house for residential purpose. According to the respondent No.1-complainant, he met his childhood friend i.e. the petitioner No. 2 and his wife (petitioner No.3), who showed him a piece of land i.e. Gat No. 616. It is alleged by the respondent No. 1-complainant that the accused assured him that the said piece of land was a freehold plot sanctioned by the Government. They also assured that all modern facilities such as hotels, medical facility, playing ground, etc. would be constructed. Believing the said representation made by the said accused and others, the

respondent No. 1 entered into a Sale Deed dated 18th October 2008. The respondent No. 1 paid a total consideration of Rs. 3,60,000/- towards purchase of the said plot of land i.e. Gat No. 616. The petitioners issued a letter of allotment dated 19th April 2018 prior to the Sale Deed, wherein, details of the plot were mentioned i.e. Gat No. 616 (p) with the area therein. It appears that all necessary documents came to be executed on behalf of the petitioner No. 1-Company and the respondent No. 1 was placed in possession of the said plot of land, pursuant to which, the respondent No. 1 constructed a house and has been residing in the said plot, which according to him, was Gat No. 616.

4 It appears that thereafter, the respondent No. 1-complainant got the said plot measured from the Revenue Department, as the petitioners failed to co-operate in getting the land measured. It appears that 'क पत्रक' i.e. the survey map, was prepared by the Revenue Department. It was after the receipt of the said survey map, that the respondent No. 1 learnt that his house was not located in Gat No. 616 but was located in Gat No. 554 (part) and 555 (part). It is only then that the respondent No. 1 learnt that he was cheated by the petitioners, pursuant to which, he filed a private complaint

in the court of learned Judicial Magistrate, Pune in RCC No. 822/2020 (earlier Cri. MA 4193/2019) below Exhibit 1. The learned Judicial Magistrate vide order dated 28th February 2020, on perusal of the complaint, the statement of the respondent No.1-complainant and the documents on record, observed that it was crystal clear that the accused had knowledge and had placed the respondent No.1-complainant in another plot, by assuring the said plot was bearing No. 616 as per the registered Sale Deed bearing No. 7755/2008 and caused the complainant to construct his house, and as such, cheated him. The learned Magistrate further observed that it was the intention of the petitioners to cheat the respondent No. 1 by showing a plot of land which was not Gat No. 616 and thereafter, issued process as against the petitioners.

5 Being aggrieved by the said order issuing process, the petitioners challenged the same by filing Criminal Revision Application No. 140/2020 . The learned Sessions Judge dismissed the said revision application vide judgment and order dated 17th December 2021. Hence, this petition.

6 Learned counsel for the petitioners submits that there was no question of cheating the respondent No. 1 at any point of time. He submits that the description of the Gat number was different, however, the area as well as the boundaries, as promised vide the said Sale Deed and the letter of allotment were the same. He submits that therefore, there was no question of cheating the respondent No.1.

7 Learned counsel for the respondent No. 1 opposes the petition. He submits that no interference was warranted in the impugned orders issuing process and the order passed by the Revisional Court dismissing the said revision application. Learned counsel for the respondent No. 1 has also filed an affidavit of the said respondent. According to the learned counsel for the respondent No.1, the petitioners had categorically represented and promised that possession of Gat No. 616 would be handed over, whereas, what was handed over was a different Gat number. He submits that the present respondent No. 1 has been cheated and it cannot be said that it was a mistake in the Gat number, inasmuch as, apart from the respondent No. 1, several other persons i.e. plot owners have been cheated by the petitioners.

The learned counsel relied on a letter dated 14th September 2016 addressed to the Deputy Collector, Taluka Mulshi, District Pune, by the plot owners' association, setting out in detail the illegalities and misrepresentations done by the petitioners. The said letter is annexed to the affidavit-in-reply filed by the respondent No.1 at Exhibit D at page 116. He submits that the amount involved in the present case is Rs. 1 crore, inasmuch as, several plot owners have been cheated. He submits that infact, some of the plot owners have not been handed over possession of the plots despite executing Sale Deeds.

8 Both, the trial Court as well as the Revisional Court have by reasoned orders, issued process and dismissed the revision application filed by the petitioners. It is pertinent to note, that it is not one such odd case, where the Gat number is wrongly mentioned by the petitioners. The facts reveal that apart from the respondent No.1, several persons have been similarly cheated and infact, some have not even been handed over possession, despite Sale Deeds having been executed. In the present case, the Sale Deed is of the year 2008, pursuant to which, the respondent No. 1, believing that the plot of land allotted to him was Gat No. 616, constructed

his house. It is only when the respondent No. 1 went before the Collector for getting the plot measured, that he learnt that the Gat number was not 616 but 554 (part) and 555 (part). It appears that the Gat number 616 finds mention in the allotment letter handed over by the petitioners to the respondent No.1, as well as in the Sale Deed executed between the petitioners and the respondent No.1.

9 *Prima facie*, it appears that the respondent No. 1 believing the petitioners that the correct Gat number was handed over to him, even constructed his house. Infact, it is pertinent to note that the petitioners do not deny that the plot purchased by the respondent No. 1 is not 616. It also appears that there was exchange of correspondence but no corrective steps were taken by the said petitioners to get the number corrected. One can understand if there was one such mistake in terms of one transaction, however, the petitioners have, apart from the respondent No. 1, done the very same act with other plot owners, which *prima facie* shows their intent.

10 Having perused both the impugned orders, no infirmity can be found in the same. Petition being devoid of merit, is dismissed.

11 The learned Judge to conduct the trial on its own merits,
influenced by the observations made in this order.

REVATI MOHITE DERE, J.