

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

CRIMINAL WRIT PETITION NO.1069 OF 2016

Audumbar Narayan Akude

..... Petitioner

Versus

State of Maharashtra

and others

.... Respondents

Mr. Shriram S. Chaudhari, Advocate for the Petitioner.

Mrs. Veera Shinde, APP, for the Respondent-State.

Mr. Suhas S. Inamdar, Advocate for Respondent No.3.

CORAM : M.G. SEWLIKAR, J.

DATE : 21st JULY, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is taken up for final hearing at the admission stage.

2. Facts in a nutshell can be stated thus:

The Solapur Spinning & Weaving Mill Ltd was engaged in production of yarn. It was renamed as Juni Mill. Juni Mill was closed and a Receiver came to be appointed to sell the properties of the Mill for settling the claims of the creditors. Accused No.1 along with other workers of the Mill

agreed to purchase the land of Juni Mill by contribution in the auction. It was orally agreed to allot the developed plots to the workers who would contribute in the said auction. Accordingly, Juni Mill Bekaar Kamgar Varasdar Aani Janhit Sangharsha Samiti Trust was constituted. Accused No.1(respondent No.2 herein) was the Chairman of the said Committee, who collected Rs.30,000/- from each of the workers. It was agreed that on payment of Rs.30,000/-, plot of 1000 sq. ft. would be allotted to those workers who paid Rs.30,000/-. The amount which was collected in this manner was deposited in UCO Bank. Said Samiti took the land of Juni Mill in auction. Rs.2,83,00,000/- (being 25% of the amount collected from the workers) was deposited. Time was granted by this Court to deposit the remaining 75% of the amount of auction. Juni Mill Samiti could not arrange for the deposit of 75% of the amount of auction. Hence, 25% of the deposit amount was forfeited. Thereafter, respondent No.2 approached one Sharad Mutha and Ratanlal Jain and took financial assistance from them for

payment of remaining auction amount. This Court granted permission to deposit the remaining auction amount with interest of 15%. Necessary agreement with the person who had assisted in payment of remaining auction amount was executed by the Samiti through respondent No.2.

3. The petitioner lodged a complaint alleging therein that respondent No.2 did not take the members of the Samiti in confidence and illegally transferred the possession of the land of Juni Mill to third persons. Irrevocable power of attorney was given to respondent No.2. The agreement to that effect was executed with Sharad Mutha on 6.9.1996. Charge for the said amount was created on some properties of Juni Mill. Said transactions were entered into by respondent No.2 by passing resolution. It is alleged that respondent No.2 established Uma Sahakari Gruhnirman Sanstha as a nominee of Juni Mill Bekar Kamgar and Janhit Sanghursh Samiti and transferred the land of the Mill to Uma Sahakari Sanstha. According to the complainant, it was orally agreed to allot the developed plots

to the members who had contributed in payment of Rs.30,000/-. However, all the members were not allotted the plots. It is alleged that the complainant had gone for the registration of the agreement for sale of land but the registry could not be effected as respondent No.2 was demanding Rs.25,000/- towards development charges. Respondent No.2 also did not give possession of the said plot. On all these allegations, the FIR was lodged.

4. Investigation was taken up. After completion of investigation, it transpired that it is a civil dispute, therefore, the investigation officer submitted 'C-Summary' report. Learned Magistrate by her order dated 30.9.2013 accepted the 'C-Summary' report. This order was challenged before the learned Sessions Court by preferring Criminal Revision Application No.217/2013. Learned Additional Sessions Judge dismissed the revision. This order is being assailed in this Petition.

5. I have heard learned counsel Shri Shriram Chaudhari for the petitioner, Smt. Veera Shinde, learned APP

for the State and Shri Suhas Inamdar, learned counsel for the respondent No.3.

6. Learned counsel Shri Chaudhari submitted that despite making out *prima facie* case 'C-Summary' report was accepted. He submitted that respondent No.2 committed misappropriation. He submitted that respondent No.2 collected the amount from the petitioner and other depositors but did not allot plots to them. He submitted that respondent No.2 was demanding Rs.25,000/- more for the development charges. When the petitioner refused to pay the development charges, respondent No.2 refused to execute the sale deed. He submitted that the entire amount is siphoned off by respondent No.2. The amount is collected by respondent No.2. It is misappropriated and, therefore, no plot was allotted to any of the workers. He has, therefore, contended that respondent No.2 is guilty of the misappropriation.

7. It is pertinent to note that 'C-Summary' report has been accepted by the learned Magistrate and the order

of acceptance of 'C-Summary' report has been confirmed by the learned Additional Sessions Judge in revision. The scope of writ under Article 227 of the Constitution of India is very limited. This Court while exercising jurisdiction under Article 227 is not expected to reappreciate the evidence unless it is shown that there is perversity in the orders passed by the sub-ordinate Courts. On these settled principles, it will have to be ascertained whether there is any perversity in the orders of the Magistrate and the revisional Court.

8. The grievance of the complainant is that the persons who had deposited Rs.30,000/- have not been allotted plots and possession is not handed over to them. Learned Magistrate has observed in her order that the complainant was allotted plot No.38 and the complainant was also given the consent letter dated 31.10.1998. She has also observed that plot allotment letter had also been given to the complainant. When these observations were brought to the notice of the learned counsel representing the

petitioner, learned counsel Shri Chaudhari submitted that the observations are correct. It is, thus, clear that plot No.38 has been allotted to the complainant with allotment letter. Therefore, the allegation of the complainant that respondent No.2 has committed misappropriation does not appeal to reason. It further appears from the allegations in the FIR that respondent No.2 had demanded Rs.25,000/- towards the development charges and refused to execute sale deed as the same was not paid. Even if this statement is accepted at its face value, still it cannot be said that the offence under Sections 406, 403, 420 read with Section 34 of Indian Penal Code is made out. These allegations themselves show that the respondent No.2 had the intention to execute the sale deed in favour of the petitioner. However, the sale deed could not be executed as respondent No.2 was demanding Rs.25,000/- as development charges before execution of the sale deed. The petitioner refused to pay the said amount. This chronology of events clearly shows that respondent No.2 had the intention to execute the sale deed.

9. From the averments in the FIR, it does not appear that respondent No.2 had no intention to execute the sale deed. Respondent No.2 was ready to execute the sale deed provided development charges were paid. Whether the condition of payment of development charges before execution of the sale deed is an essential condition or not is a civil dispute.

10. The averments in the FIR do not show that the respondent No.2 had no intention to execute the sale deed. He could not execute the sale deed as Rs.25,000/- towards the development charges was not paid. Therefore, it cannot be gathered from the evidence collected by the prosecution and from the averments in the FIR that respondent No.2 had no intention to execute the sale deed and put the complainant in possession of the said land.

11. The observations of the learned Magistrate further show that the amount has been deposited in fixed deposit in the name of Juni Mill Plot Dharak Sanghatana in Solapur District Co-operative Bank. This clearly shows that

the amount of Rs.500/- collected by respondent No.2 has been deposited in the fixed deposit receipt in Solapur District Co-operative Bank in the name of the Saghatana. Learned counsel for the petitioner could not point out that these observations of the learned Magistrate are incorrect. This clearly shows that there is no evidence to indicate that the respondent No.2 is guilty of misappropriation.

12. Learned Counsel Shir Chaudhari further submitted that another depositor by the name of Ajitkumar Nagesh Deshpande has lodged an FIR with the police station and on the basis of this FIR charge-sheet has been filed against respondent No.2. He submitted that the allegations in the FIR lodged by Ajitkumar Nagesh Deshpande and the allegations made against the petitioner in his FIR are identical. Still different standards are applied and in the FIR of the petitioner 'C-Summary' report is submitted.

13. If the allegations in both the FIRs are same, in that case, second FIR need not be registered. **(Pradeep Ram Vs. The State of Zharkhand & Anr, Criminal Appeal**

No.816-817 of 2019 [arising out of SLP (CRL) Nos.10052 of 2018]). All these transactions are in the course of same transaction. If they in the course of same transaction, registration of another FIR is not necessary. For this reason also registration of separate FIR is not warranted. If trial Court permits, applicant can tender his evidence during the trial of the criminal case filed on the basis of FIR of Ajit Kumar Nagesh Deshpande.

14. From the aforesaid discussion, it is clear that no offence is made out against respondent No.2. It appears to be a civil dispute. The learned Magistrate and the learned Revisional Court were justified in accepting the 'C-Summary' report. Hence, the order :

:: O R D E R ::

- i. Writ Petition is dismissed.
- ii. Rule is discharged. No costs.

(M.G. SEWLIKAR, J.)

Digitally signed
by
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PRAKASHRAO
DESHMANE
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Deshmane (PS)