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

WRIT PETITION NO.2066 OF 2022

Manoj Lachhmandas Jagwani ... Petitioner
V/s.
Naresh Manoharlal Vazirani & Anr. ... Respondents

Mr. Rajiv Patil, Senior Advocate with Mr. Ojas
Kocharekar for the petitioner.

Mr. Vinayak R. Patil for respondent no.1.

Mr. A.R. Patil, APP, for respondent no.2/State.

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CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 22, 2022

P.C.:

1. The original accused in a complaint for offence under sections 464, 465, 467 and 471 of the Indian Penal Code is challenging the order dated 11th January 2022 passed by the learned Judicial Magistrate First Class, Ulhasnagar issuing process/

2. The respondent is original complainant who has filed R.C.C. No.1567 of 2021 alleging that in the year 2009 there was agreement to sale executed between the complainant and the accused. Total consideration agreed was Rs.1,90,00,000/- (Rupees One Crore Ninety Lakh Only), out of which the accused paid Rs.25,00,000/- (Rupees Twenty Five Lakh Only) as earnest money. The balance amount of earnest money of Rs.1,65,00,000/- (Rupees

One Crore Sixty Five Lakh Only) was required to be paid before 31st March 2010. As the accused could not complete the transaction, the transaction was canceled by executing deed of cancelation dated 18th July 2013. It is also averred that the petitioner issued notice for cancelation of agreement to sale and refunded amount of Rs.25,00,000/- (Rupees Twenty Five Lakh Only) to the original complainant.

3. The petitioner thereafter filed Regular Civil Suit No.241 of 2018 for permanent injunction restraining the complainant from creating third party rights over the property which was the subject of matter of agreement to sale of 2009. The Civil Court granted temporary injunction in favour of the petitioner restraining the complainant from creating third party rights.

4. According to the complainant, in the said civil suit the complainant came to know about the alleged agreement executed in the month of January 2014. According to the complainant, he sought report of the handwriting expert and after getting the report of the handwriting expert filed present complaint. The learned Magistrate by order dated 11th January 2022 issued process against the petitioner which was challenged by the petitioner by way of Criminal Revision Application No.12 of 2022 which has been dismissed by the impugned order. Aggrieved thereby, the accused has filed present writ petition.

5. Mr. Rajiv Patil, learned senior advocate submitted that the filing of complaint is nothing but abuse of process of Court as the same has been filed as a counter-blast to the suit for injunction

filed by the petitioner. He submitted that in spite of execution of agreement of 2014, no specific plea was raised in the written statement disputing the execution of the agreement to sale. He submitted that the averment in the complaint that the complainant had taken loan from the accused and towards repayment of the same cheque dated 14th July 2015 was issued is unbelievable. He submitted that on reading of the complaint as a whole the initial ingredients of the offence against the petitioner are not made out.

6. *Per contra*, Mr. Vinayak Patil, learned advocate for the complainant invited my attention to the complaint filed by the petitioner with the concerned police station on 8th May 2017, wherein it is stated that cheque of Rs.5,00,000/- (Rupees Five Lakh Only) bearing No.000590 dated 13th December 2013 drawn on the Bank of India, Ulhasnagar was issued towards consideration of agreement of 2009. He submitted that apart from the said fact, the handwriting expert report supports the contention of the petitioner that the signature on the agreement to sale of 2014 was not of the complainant. He invited my attention to the specific averments made in the complaint which are sufficient to constitute offence alleged against the petitioner. He submitted that the learned Magistrate while issuing process has considered in detail necessary factors and after application of mind has issued process which has been confirmed by the revisional Court by reasoned judgment.

7. Having considered the submissions made on behalf of both sides, in my opinion, *prima facie*, there appears to be substance in

the contention raised on behalf of the complainant that there are specific averments made against the accused which are sufficient to constitute offence alleged against the petitioner. In so far as the contention raised on behalf of the petitioner that filing of complaint is a counter-blast to the suit filed by the complaint, it needs to be noted that the complaint is based on the handwriting expert's report who has opined that the signature on the disputed agreement is not of the complainant. In paragraph 14 of the complaint, the reasons for demonstrating difference in signatures have been quoted. It is mentioned that plasticity of disputed and admitted signature is different. Line of quality is also different. Various other factors also stated in the complaint to show that the signature was not that of the complainant. Apart from the said circumstance, the complaint filed by the petitioner with the concerned police station clearly states that cheque no.000590 dated 13th December 2013 drawn on the Bank of India was issued as a consideration for agreement of 2009. The cheque number mentioned in the disputed agreement to sale and the date are same.

8. Ultimately whether the document in question is forged or not is to be decided by the learned Magistrate after granting both parties opportunity to lead evidence by holding full-fledged trial. On the basis of the material available with the learned Magistrate, the learned Magistrate has issued process by giving plausible reasons. There is no perversity nor miscarriage of justice.

9. There is no merit in the petition. The petition is, therefore, dismissed. No costs.

10. It is made clear that the observations made above are restricted to the decision of the present petition. The learned Magistrate shall not be influenced by any of the observations made above while deciding the complaint on merits.

(AMIT BORKAR, J.)