

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

CRIMINAL WRIT PETITION NO. 6421 OF 2021

Dilip Maruti Galande ...Petitioner
Versus
Sudhir Bhagwan & Ors. ...Respondents

....

Ms. Pooja Agarwal, Advocate for the Petitioner.

Mr. Ashok B. Tajane, Advocate for Respondent No.1 to 3.

Mr. A.R. Patil, APP for the Respondent No.4 – State.

....

CORAM : PRAKASH D. NAIK, J.
DATE : 23rd AUGUST, 2022.

PER COURT:

1. The petitioner is the original complainant in R.C.C. No.5439 of 2017 filed before the Court of learned J.M.F.C., Court No.4, Pune for offences under Sections 420, 406 & 506 read with Section 34 of Indian Penal Code (for short “IPC”).

2. The accusations in the complaint are as follows :-

The complainant was acquainted with accused No.1 since several years. Accused No.1 is the cousin of complainant. Accused Nos. 2 & 3 are wife and son of accused No.1. The accused represented to complainant that, they are owners of the property situated at S.No.8462A/1 Final Plot No.8426/A/1, Plot

No.156+160/161 admeasuring 157.8 Sq. Meters along with directions therein at Sub Division Solapur, Taluka Solapur. The accused No.1 was intending to sell his property. The accused represented that the property is in their possession. The complainant agreed to purchase the said property for consideration of Rs.5,00,000/-. By way of earnest money, the accused accepted Rs.1,18,000/- from the complainant. There was no execution of any document in that regard. The complainant paid the aforesaid amount by cheques issued in favour of the accused. The accused had agreed to execute the sale deed. However, it was not executed. The complainant was ready to pay the balance consideration. The accused avoided to execute the sale deed. The accused then refused to complete transaction. The complainant tried to make complaint to the Police. No action was initiated by the police. Hence, Private complaint was filed before the Court of learned J.M.F.C.

3. Verification statement of the complainant was recorded on 30.10.2017. Vide Order dated 30.01.2018, learned J.M.F.C. Court No.4, Pune issued process against the accused for offences under Sections 420, 406, 506 read with Section 34 of IPC.

4. The respondent Nos.1 to 3 preferred Criminal Revision Application No.198 of 2019 challenging the order of process.

Learned Sessions Judge vide order dated 29.10.2021 allowed the revision application and order issuing process was set aside and also imposed cost of Rs.25,000/- against complainant.

5. The Petitioner aggrieved by Order dated 29.10.2021 passed by the learned Additional Session Judge, Pune setting aside the order of process and imposing cost of Rs.25,000/- against the Petitioner.

6. Learned Advocate for the Petitioner submitted that, prima facie case was made out for offences under Sections 420, 406 & 506 r/w Section 34 of IPC. The learned Sessions Judge ought not to have set aside the order of process. The reasons assigned by the learned Sessions Judge are contrary to law. The accused induced the complainant to part with the amount of Rs.1,18,000/- towards the purchase of properties. After receipt of the amount, the accused failed to execute the sale deed in respect to the property. The amount entrusted was misappropriated by the accused. False representations were made by accused which constitutes the offence under Sections 406 & 420 of IPC. Merely on the ground that the civil suit was filed by the complainant, the order issuing process cannot be set aside. There is no legal bar for initiating parallel proceedings. The dishonest intention and

misappropriation of the amount is evident from the complaint.

7. The Respondent No.1 has filed an affidavit-in-reply opposing the reliefs sought in this Petition.

8. Learned Advocate for Respondent Nos. 1 to 3 submitted that, there is no element of cheating or criminal breach of trust. The dispute is purely of civil nature. The complainant had filed a civil suit for specific performance. The said fact of filing suit was suppressed while filing the criminal complaint. The process was issued without taking into consideration the fact that the complainant had already initiated civil proceedings. The transaction would at the most amount to breach of contract. There is no element of cheating or criminal breach of trust. The Petitioner has already filed civil suit claiming relief of specific performance and possession.

9. Perused the documents on record. The grievance of complainant is that, the amount of Rs.1,18,000/- was paid by him by way of earnest money for purchasing the property from the accused. Despite receiving the amount, sale deed was not executed by the accused. It is pertinent to note that, the complainant/Petitioner has filed civil suit against Respondent Nos.1 to 3 bearing R.C.S. No.1026 of 2015 claiming the relief of specific

performance and possession. The said civil suit was filed on 11.09.2015. The perusal of complaint indicate that, the complainant has alleged that, despite oral agreement, the respondents/defendant avoided to execute sale deed in favour of the Petitioner/complainant and it has become necessary for petitioner to get the sale deed executed through Court. The said suit was filed much prior to the filing of criminal complaint. The criminal complaint was filed on 10.10.2017. Vide order dated 27.10.2015 summons was issued in the suit. After a period of about 2 years thereafter the complainant initiated criminal complaint by suppressing the fact of filing the civil suit. The learned Sessions Judge while allowing the revision application preferred by the respondents has considered the submissions of both the sides in large details and also considered the judgments placed for consideration by both the sides. The learned Sessions Judge has analysed the law and facts and set aside the order of process. The learned Sessions Judge has observed that the complainant must allege that there was fraudulent intention by the accused to induce him to deliver property. This case is of civil nature. There was breach of contract by accused. From the facts, no interference can be drawn that the accused were bearing dishonest intention either to cheat the complainant or to grab his

property. There was no inducement to the complainant to deliver cash amount with an intention to cheat him. I do not find any reason to set aside the impugned order setting aside the order or process. However, it appears that, learned Sessions Judge has also imposed the cost of Rs.25,000/- on the complainant for initiating the proceedings. Although the order issuing process deserves to be set aside, the order imposing cost of Rs.25,000/- upon the complainant was not warranted. The order to that extent is required to be set aside.

ORDER

- i) The prayer in this petition for setting aside order dated 29/10/2021 passed by Additional Sessions Judge Pune in Criminal Revision Application No.198/2019, quashing order of issuance of Process passed by Learned J.M.F.C., Court No.4 Pune in R.C.C. No.5439/2017 dated 30.01.2008 is rejected.
- ii) The order dated 29.10.2021 passed by Additional Sessions Judge Pune in Criminal Revision Application No.198/2019 only to the extent of imposing cost of Rs.25,000/- against the petitioner is set aside.
- iii) Petition is disposed off.

(PRAKASH D. NAIK, J.)