IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION No. 323 OF 2022.

Mr. Dhirendra Surendra Barlinge,
Aged about 76 years, Occupation -
Business, resident of Flat No.101, Sursheel
Apartment, Plot No.335, Laxmi Nagar,
Nagpur. ... **APPLICANT.**

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Police Station Sitabuldi,
District Nagpur.

2.Dhananjay s/o Madhukar Lele,
Aged about 49 years, Occupation
Business, resident of Plot No.351,
Khare Town, Dharampeth,
P.S. Sitabuldi, District Nagpur. ... **NON-APPLICANTS.**

Mr. S. Kadam, Advocate for the Applicant.
Shri S.M. Ukey, Addl.P.P. for the Non-applicant No.1/State.
Shri A.M. Sudame, Advocate for Non-applicant No.2.

CORAM : VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.

DATE : NOVEMBER 14, 2022.

ORAL JUDGMENT (Per Vinay Joshi, J) :

This is an application under Section 482 of the Code of Criminal Procedure seeking to quash the first information report registered as Crime No.441/2020 with Police Station Sitabuldi, District Nagpur for the offence punishable under Section 420 of the Indian Penal Code. Primely it is contended that the transaction is purely of civil nature, which has been coloured as a criminal case to pressurize the applicant/accused. It is submitted that the entire police report does not disclose essential ingredients to constitute an offence of cheating.

2. Heard the learned Counsel for the parties. With their consent the matter is taken up for final disposal at admission stage.

Admit.

3. The State as well as the learned Counsel appearing for non-applicant no.2/informant resisted the application. It is submitted that the applicant has dishonestly induced the informant to deliver huge amount and subsequently sold the property to third party, and thus an offence of cheating is evident. It is submitted that merely because a civil suit is pending, it does not mean that criminal proceeding is not maintainable.

4. At the instance of a report lodged by the informant dated 24.10.2020, a crime was registered. The facts in short are that the applicant and informant are acquainted with each other. In the year 2012, the applicant had approached to the informant with a proposal to sell his plot. Accordingly on 06.08.2012, an agreement was executed by the applicant in favour of the informant to sale his plot. Within two days of the agreement, the informant has paid an amount of Rs.6 lakhs by way of cheque towards the agreement. Later on the applicant has demanded further amount, on which the informant from time to time paid in cash total amount of Rs.20 lakhs towards further part consideration. Again on demand, the informant

has paid further amount of Rs. 5 lakhs by cheque on 18.12.2012, and thus, paid total part consideration of Rs.31 lakhs to the applicant. It is informants' case that in the year 2018 he came to know that a third party has occupied the plot, and therefore, he made enquiry on which he learnt that the applicant has sold the subject plot on 27.04.2018 by a registered instrument to some third party, therefore, the informant has filed a report contending that the applicant has cheated him for Rs.31 lakhs.

5. Copy of the agreement to sale dated 06.08.2012 has been produced on record. Said agreement indicates that the total consideration was Rs.70 lakhs, out of which at the time of agreement the applicant has received Rs. 6 lakhs. It is applicant's case that the transaction was purely of hand loan. He has borrowed Rs.11 lakhs from the informant, which he had returned. At the time of transaction, at the instance of the informant, the applicant has signed on blank papers, which were misused by converting the same into agreement to sale and payment receipts. Other side disputed said contention. However, it is not necessary to consider applicants'

defence at this stage. Admittedly, the informant has filed Special Civil Suit No.1045/2021 for specific performance of contract against the applicant and stranger purchaser. The said suit is subjudice.

6. It is primely argued that since the civil suit is pending, the criminal prosecution is not maintainable. In response to said submission, the learned Counsel for the informant by relying on the decisions in cases of [1] **Rajesh Bajaj .vrs. State NCT of Delhi – 1999[3] SCC 259;** [2] **M Krishnan .vrs. Vijay Singh – 2001 [8] SCC 6459** and [3] **Kamladevi Agrawal .vrs. State West Bengal – 2002 [1] SCC 555**, would submit that if the complaint prima facie makes a case for cheating, there is no bar to continue criminal proceeding, though Civil Suit is pending.

7. It is settled law that mere pendency of civil proceeding is no ground to quash criminal proceedings, if the police report makes out the essential ingredients to constitute an offence of cheating. Basically it is a matter of fact to assess on facts whether the informant has made out a case for cheating. For the purpose of

ready reference, the relevant penal provision is quoted herein below :

> *415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*

8. In order to constitute an offence of cheating, there must be fraudulent or dishonest inducement to a person to deliver a property. The essential ingredients of *mensrea* must be present to constitute the offence. Mere breach of promise would not attract criminal liability. In this view of the matter, the police report is closely perused. The informant has simply stated about the proposal brought by the applicant to sell his land, and payment of part consideration from time to time. Essentially he stated that in the year 2018 he learnt that the said plot was sold to third party, therefore, deception. Reading of entire police report no where indicates that since inception the applicant was carrying intention to

deceive.

9. In reported case of **Vijay Kumar Ghai and others .vrs. State of West Bengal and others – [2022] 7 SCC 124**, the Supreme Court has expressed that there is distinction between breach of contract and cheating. Fraudulent or dishonest intention is the basis for the offence of cheating. Reading of the report indicates that the parties have entered into the contract on 06.08.2012 and substantial consideration was allegedly paid upto 18.12.2012. Pertinent to note that the informant came to know about the sale of the land in the year 2018, however, the police report has been filed after two years i.e. on 24.10.2020. The learned Counsel appearing for the informant by placing reliance on the decision in case of **Shantaben Bhaurabai Bhuriya .vrs. Anand Athabai Chaudhari – Criminal Appeal No.967/2021 dated26.10.2021 (Supreme Court)** contended that ground of delay cannot be a reason to quash the proceeding, since during the trial delay can be explained. No doubt, mere delay is not the decisive factor, however, while considering the circumstances, the same can be taken into account. Though the informant came to

know about the sale transaction in the year 2018, however, the report has been lodged after two years.

10. It is to be noted that the disputed agreement for sale was executed on 06.08.2012, and substantial amount has been allegedly paid till 18.12.2012. The moot question arises as to why for next 6 years, the informant kept mum about the transaction. Prima facie it appears that if since inception the applicant was having dishonest intention to induce the informant to deliver money, he would have sold the property in proximity. However, for next 6 years there was no grievance therefore, it cannot be gathered that since inception there was dishonest intention.

11. Careful examination of the report reveals that there is nothing to show that at the inception there was dishonest intention on the part of the applicant to cheat, which is a condition precedent to constitute an offence under Section 420 of the Indian Penal Code. The informant has already resorted to civil remedy for breach of contract. Having regard to above facts, we are of the view that the

first information report does not disclose any criminal liability. It is a settled law that criminal proceeding shall not be encouraged when it is found that the proceeding is predominantly of civil nature pertaining to breach of civil contract. There may be circumstances which compelled the applicant to sale the property after a gap of 6 years. However, the report no where indicates that at the time of entering into the transaction there was fraudulent intention to deceive the informant. We are satisfied that the continuation of investigation and further proceeding amounts to abuse of process of the Court and, therefore, the Criminal Application deserves to be allowed. The same is accordingly allowed and disposed of.

The Criminal prosecution namely first information report bearing Crime No. 441/2020 registered with Police Station Sitabuldi, District Nagpur for the offence punishable under Section 420 of the Indian Penal Code, is hereby quashed and set aside.

JUDGE **JUDGE**

Rgd.