

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

CRIMINAL APPLICATION [APL] No. 844/2021.

Mahendra s/o Ganpatrao Khetan,
Aged about 58 years, Occupation
Business, resident of Highwaydepo,
Ayrna Dairy, Infront of Government
Milk Dairy, Murtizapur Road,
Akola, Tahsil and District Akola. ... **APPLICANT.**

VERSUS

1.State of Maharashtra,
through its Police Station Officer,
Police Station, Washim [city]
District Washim.

2.Pradeep s/o Prabhakarrao Deshmukh,
Aged adult, Occupation – retired,
resident of ‘Anudeep’, Shastri Colony,
Chandak Layout, Lakhala,
Washim, Tq. And District Washim. ... **NON-APPLICANTS.**

Mr. N.R.Tekade, Advocate for the Applicant.
Mr.H.D. Dubey, A.P.P. for Non-applicant No.1.
None for Non-applicant No.2 - Served.

CORAM : VINAY JOSHI, J.

DATE : JULY 05, 2022.

ORAL JUDGMENT :

Though non-applicant no.2 has been served with notice of this application, despite repeated opportunities, he has chosen not to appear. On 29.06.2022, the matter came to be adjourned to 04.07.2022 with a specific understanding that if none appears for non-applicant no.2, the same will be heard and decided on merits. None appears for non-applicant no.2 on 04.07.2022. However, with a view to give one more opportunity, again the matter was adjourned to today, still there is no appearance. In this view of the matter, I have heard the learned Counsel appearing for the applicant and the learned A.P.P. for the non-applicant no.1 - State.

2. The non-applicant no.2 – Pradeep Deshmukh (complainant) has filed a private complaint bearing Regular Criminal Case No.316/2016, for the offence punishable under Sections 420, 465, 468 and 471 read with Section 34 of the Indian Penal Code. The applicant – Mahendra has been arrayed as accused no.3 in the said complaint. The applicant has invoked the inherent jurisdiction of this Court seeking quashing of the complaint on various grounds.

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3. The learned Counsel for the applicant would submit that the complaint is a gross abuse of the process of the Court. The dispute is of civil nature. Moreover, the applicant has harped on the point of gross delay of 9 years in filing the complaint. It is submitted that this Court has quashed the complaint against rest of the accused in Criminal Application No. 1015/2019, 157/2021 and 573/2021. According to the applicant, continuation of stale proceeding is unjustifiable.

4. Briefly stated, the applicant along with co-accused have formed a Partnership Firm namely Balaji Developers, indulging into the construction and development activities. Somewhere in the month of July, 2003 the complainant had approached to the applicant and other partners of the Firm for purchasing shop Nos.34, 35 and 41 in Building "F" of Balaji Complex. Accordingly an agreement was executed in the name of wife of the complainant for sale of the aforesaid shop blocks for a total consideration of Rs.6,05,000/-. Earnest amount of Rs.3,00,000/- was paid. At the time of executing the agreement, the applicant Mahendra had

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assured the complainant that the shop blocks will be constructed and soon possession will be delivered. It is the contention of the complainant that the applicant made false representation for sale of the shops, which were later on sold to third party. According to the complainant though the earnest amount of Rs.3 lakhs have been returned in the year 2009, however, it would not exclude the applicant from criminal liability.

5. It can be inferred from the complaint itself that in the year 2003, the applicant has entered into an agreement for sale of shop blocks by accepting sum of Rs. 3 lakhs. The said amount has been returned in the year 2009. Pertinent to note that undeniably the complainant had accepted the earnest amount and there were exchange of notices in between the parties. Apparently it is a case of breach of agreement for which the earnest amount has also been refunded, therefore, the dispute appears to be essentially of civil nature. The complainant has not give any justification for prolonged delay of 9 years for filing the complaint. This fact also supports the contention of the applicant that the dispute was of civil nature.

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6. This Court while deciding the above referred three criminal applications has considered this aspect and ultimately quashed the criminal complaint against rest of the accused. Though there are allegations that the applicant has personally made representation for sale of the flats, however, it is evident that there was a transaction of sale which was not materialized inasmuch as the earnest amount was refunded long back. There is no propriety in allowing the criminal prosecution to go ahead after lapse of long 9 years. If such stale prosecution is allowed to continue, then it will cause harassment to the applicant as well as will amount to abuse of the process of Court.

7. In view of above, Criminal Application is allowed. Regular Criminal Case No.316/2016 pending before the Chief Judicial Magistrate, Washim is hereby quashed qua the present applicant.

JUDGE