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

CRIMINAL APPLICATION (APL) NO. 1211 OF 2021

Nitin s/o Haridas Gudadhe, aged about 45 years, Occupation business, resident of Near Jagdish Kirana Store, Jaitala, Nagpur.

... **APPLICANT**

VERSUS

Ketan Arunrao Tarekar, aged about 46 years, occupation business, resident of Behind Ganeshpeth Police Station, Ganeshpeth, Nagpur.

… **NON-APPLICANT**

Shri U.P. Dable, Advocate for the applicant.
Shri Vivek Krishnarao, Advocate for the non-applicant.

CORAM : VINAY JOSHI, J.
DATED. : 20.07.2022.

ORAL JUDGMENT :

ADMIT. Considering the controversy involved in the application, the criminal application is taken up for final disposal by consent of both the parties.

2. This is an application seeking to quash the order of issuance of process by setting aside the order dated 26.02.2021 passed in Criminal Revision Application No.81 of 2017 by the Additional Sessions Judge, Nagpur. The applicant has challenged the order of issuance of process along with the order of framing of charge, which is stated to be illegal, perverse and against the provisions of law.

3. Briefly stated, non-applicant Ketan had filed a private complaint bearing Criminal Complaint Case No.1999 of 2012 against the applicant Nitin Gudadhe for the offence punishable under Sections 406, 417, 418, 420, 464 read with Section 34 of the Indian Penal Code. It is the case of the non-applicant (complainant) that one Niranjan Nagrale had agreed to sell his agricultural land to the complainant and applicant (accused) for consideration of Rs.3,87,500/-. In pursuance of that Niranjan Nagrale (seller) had executed an agreement to sell dated

18.10.2006 jointly in favour of the complainant and accused. In pursuance of agreement to sell, earnest amount of Rs.2 lakhs have been paid. It was agreed to execute sale deed within a period of six months. It was agreed that at the time of registration of sale-deed remaining consideration of Rs.1,87,500/- would be paid. It was the complainant's case that he has paid entire earnest amount of Rs.2 lakhs to Niranjan (seller), in cash. The complainant contended that in the third week of March, 2010, he learnt that seller Niranjan had executed the sale-deed on 16.11.2007 in favour of accused. It is the complainant's grievance that though he along with the accused has agreed to purchase the property by way of an agreement, however accused by joining hands with the seller Niranjan got executed sale-deed solely in his favour and therefore, the offence of forgery, fraud and cheating.

4. Initially, on 12.04.2010, the complainant has filed police report stating the commission of offence as aforesaid mentioned, however the Police did not took cognizance. On filing of private complaint, the learned Magistrate has postponed the issuance of process by directing the Police to investigate and

submit the report. During the course of investigation, the Police have recorded statements and filed the report stating that the transaction was of civil nature. However, the learned Magistrate did not accept the report, but issued the process for the offence punishable under Section 420 of the Indian Penal Code. The complainant has adduced his evidence before charge. The learned Magistrate considered the evidence before charge and vide order dated 24.11.2016 held that a case is made out to frame charge against the accused. Though in the private complaint seller Niranjan and two others were impleaded as an accused, it is held that there is no material to proceed against the rest. Inasmuch as, seller Niranjan (accused no.1) died and thus, the order for framing of charge was only against the accused no. 2, i.e. the present applicant. Being aggrieved, the applicant-accused filed a Criminal Revision, however he could not succeed, and therefore, the parties are before this Court.

5. It is the complainant's case that though he has paid entire earnest amount of Rs.2 lakhs and joint agreement was executed, however the sale-deed was executed solely in favour of

accused, and therefore, the offence of cheating. In order to substantiate his contention, the complainant has produced the copy of agreement to sell dated 18.10.2006. Undisputedly, seller Niranjan had executed agreement to sell jointly in favour of the complainant and the accused. The agreement bears a reference that towards part consideration, Rs.1 lakh was paid on 18.10.2006 and then there is an endorsement that on 06.11.2006 further amount of Rs.1 lakh has been paid leaving the balance of Rs.1,87,500/- to be paid at the time of sale-deed. The agreement nowhere spells out that the part consideration was solely paid by the complainant. I have gone through the report filed by the complainant with the concern Police. Reading of report nowhere suggests that the entire part consideration of Rs.2 lakhs has been paid by the complainant alone.

6. Contextually, I have gone through the statements recorded by the Police while carrying investigation in terms of Section 202 of the Code of Criminal Procedure. The accused in his statement admitted that a joint agreement was executed by the seller in their favour. It is his case that at the time of execution of

agreement, part consideration of Rs.1 lakh was paid by the complainant whilst the another part consideration of Rs.1 lakh was paid by him. He stated that the transaction was not materialized for sometime due to monetary constraints. He has some how collected the amount and with consent of the complainant got executed the sale-deed in his favour by assuring the complainant to refund his amount of Rs.1 lakh. After execution of sale-deed, he has also refunded amount of Rs.1 lakh to the complainant on 05.12.2007 by banking transaction. He stated that the complainant was well aware regarding the entire transaction and thus, it does not constitute the offence of cheating.

7. Learned Counsel appearing for the complainant admitted that the complainant has received Rs.1 lakh from the accused however, he tried to explain the same in his complaint stating that the said payment was of some other transaction. In this regard, he took me through the paragraph 5 of the complaint wherein it is stated that the accused has taken some Gold ornaments from the complainant on credit of which the amount is

outstanding. Pertinent to note that he has not stated that so-called credit amount was refunded, but says that the same is outstanding. Thus, there is no plausible explanation from the side of the complainant as to for what reason the accused has paid him Rs.1 lakh to him. The said fact rather admitted one about payment of Rs.1 lakh by the accused to the complainant, strengthen the complainant's stand about refund of partial earnest money.

8. The Police have carried investigation and filed a report that transaction was purely of civil nature. Assuming for the sake of order that the complainant has paid entire earnest amount of Rs.2 lakhs, still it is difficult to hold that there was dishonest inducement on the part of the accused. Though the agreement was jointly in favour of the complainant and the accused, the execution of sale-deed in favour of one of the purchaser could not be *ipso facto* termed as an offence of cheating. In order to establish the offence of cheating, dishonest intention at the time of making promise, should be evident. There is no agreement in between the parties nor it is recital of the agreement to sell that sale-deed was to be executed in favour of both. There must be

fraudulent or dishonest intention at the inception. The transaction of execution of agreement nowhere speaks that since beginning the accused was having dishonest intention and accordingly, induced the complainant to enter into the transaction. The entire affair was predominantly of civil nature. The complainant's remedy for recovery of amount if any lies elsewhere, but certainly not by filing the criminal complaint.

9. Moreover, though the sale-deed was executed in the month of November 2007, after gap of three years the complaint has been filed. The explanation for delay of late knowledge is not acceptable on the face of it. The allegations leveled in the complaint, even if taken at their face value and accepted in their entity, it do no *prima facie* constitutes the offence as alleged. The allegations levelled in the complaint are inherently improbable on the basis of which no prudent person can reach to the conclusion that there are sufficient grounds for proceeding for the offence of cheating. This Court has ample powers under Section 482 of the Code of Criminal Procedure to pass the orders to prevent abuse of the process of any Court or to secure the ends of justice.

Continuation of such unmeritorious litigation would be abuse of the process of Court. The impugned order dated 26.02.2021 passed in revision, order dated 24.11.2016 for framing of charge and the order of issuance of process are not sustained in law.

10. In that view of the matter, application succeeds. The impugned order dated 24.11.2016 passed by the Magistrate and order dated 26.02.2021 passed by the Additional Sessions Judge, Nagpur in Revision Application No.81 of 2017 are hereby quashed and set aside. The Criminal Complaint Case No. 1999 of 2012 is dismissed.

11. The application stands disposed of in the aforesaid terms.

(VINAY JOSHI, J.)

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