

1

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

CRIMINAL APPLICATION (APL) NO.791 OF 2019

1. Bharti w/o Sudhir
Jambhulkar, aged 45 years,
occupation business.
Expired.

2. Sudhir Kesharao
Jambhulkar, aged 48 years,
occupation business.

Both resident of Bezonbagh in
Prachi Kirana Store, Jaripatka,
Nagpur.

..... **Applicants.**

:: V E R S U S ::

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

2. Atul Laxmanrao Kshirsagar,
aged 30 years, occupation
service, resident of Qr.No.
50/386, HUDCO Colony,
Jaripatka, Nagpur.

..... **Non-applicants.**

=====

Shri U.P.Dable, Counsel for Applicants.

Shri S.S.Doifode, Additional Public Prosecutor for Non-applicant/State.

=====

CORAM : **ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.**

DATE : **18/11/2022**

ORAL JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard learned counsel Shri U.P.Dable for applicants and
learned Additional Public Prosecutor Shri S.S.Doifode for non-applicant
No.1/State. **Rule.** Rule made returnable forthwith and heard finally.

2

2. By this application under Section 482 of the Code of Criminal Procedure, applicants seek quashment of First Information Report No.671/2019 registered with Jaripatka Police Station, Nagpur for offences punishable under Sections 420, 468, and 471 read with Section 34 of the Indian Penal Code.

3. During pendency of the application, applicant No.1 Bharti died and, therefore, the application is pending only to the extent of applicant No.2 - Sudhir. Both were husband and wife.

4. The offences against applicant No.1 Bharti and applicant No.2 Sudhir came to be registered on the basis of report lodged by non-applicant No.2 - Atul Laxmanrao Kshirsagar with an allegation that applicant No.1 Bharti with her husband applicant No.2 Sudhir was running business under the name and style as "Bharti Developers" at Jaripatka, Nagpur. The nature of their business was selling plots. It is alleged by the complainant that he entered into an agreement with applicants to purchase a plot No.65, admeasuring 1687 square feet for a consideration of Rs.2,53,050/-. His other relatives also entered into agreements to purchase plots. Accordingly, agreements to sale were executed. However, applicants had not executed sale deeds and avoided to execute sale deed in favour of the complainant. It is contended that with an intention to cheat the complainant and his relatives, applicants had obtained money at the time of agreements to sale and had not executed sale deeds and had sold out plots to third party. The complainant lodged the report with Jaripatka Police Station,

3

Nagpur and on the basis of the said report the police registered offences punishable under Sections 420, 468, and 471 read with Section 34 of the Indian Penal Code.

5. It is contention of applicant No.2 that the alleged transaction between applicant Nos.1 and 2 and the complainant is of civil nature. They had offered alternate plots to the complainant. To show their *bona fide*, they deposited amount Rs.2,40,000/- with the Registry of this Court. It is contention of applicants that they have not prepared any forged documents and used the same and, therefore, no offence either under Sections 468 or 471 of the Indian Penal Code is made out against them. The offence punishable under Section 420 of the Indian Penal Code is concerned, there was no intention of deception. In such circumstances, it is their contention that if they face trial, it would be abuse of process of law.

6. Learned Additional Public Prosecutor Shri S.S.Doifode for the State strongly opposed the application for quashment of the First Information Report on a ground that with an intention to cheat the complainant along with his relatives, applicants entered into agreement to sale and had not executed sale deed. The applicants sold plots to third person. Thus, there was an intention of deception. Hence, the application deserves to be rejected.

7. According to learned counsel Shri U.P.Dable for applicants, the alleged transaction is of civil nature and at the most the complainant

4

can file a suit for specific performance of contract. He submitted that to show *bona fide*, applicants have deposited Rs.2,40,000/- with the Registry of this Court on 7.10.2019. He further submitted that today also applicant No.2 has deposited amount Rs.8,80,000/- with the Registry of this Court as per order dated 21.10.2022. There was no intention to cheat or deception.

8. We have considered rival submissions and perused the First Information Report. As per allegations in the First Information Report, applicant No.2 and his wife applicant No.1 were owners of plot Nos.65, 59, 127, and 70 and they have prepared forged documents and obtained amount Rs.11,25,000/- from the complainant and his relatives and cheated the complainant. As per allegations in the report, applicant No.2 along with his wife applicant No.1 were running business under the name and style as "Bharti Developers" at Jaripatka, Nagpur. They entered into agreements to sale plots to the complainant and his relatives and obtained money. Accordingly, agreements were executed. However, sale deeds were not executed. It is alleged that with an intention to deceive the complainant along with his relatives, applicants entered into an agreement and committed an offence. Recitals of the report shows that there were agreements to sale and as per agreements sale deeds were not executed even after amounts were obtained. Admittedly, applicants were dealing with the business of selling plots. The nature of profession was to develop plots and sale it. Perusal of the First Information Report, reveals that it is merely breach of agreements. To show *bona fide*, as per orders of this Court dated 7.10.2019 and

5

21.10.2022, applicants have deposited amounts Rs.2,40,000/- and Rs.8,80,000/-. As far as offences punishable under Sections 468 and 471 of the Indian Penal Code are concerned, they are reproduced for reference. The ingredients of Section 468 of the Indian Penal Code read thus :

“Forgery for purpose of cheating.- Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description a term which may extend to seven years, and shall also be liable to fine.”

The definition of forgery is given under Section 463 of the Indian Penal Code, which reads thus:

“Forgery.- [Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

Section 471 of the Indian Penal Code deals with using of forged documents as a genuine.

9. The allegations in the First Information Report are vague in nature. The allegations in the First Information Report do not show that which documents were forged by applicants. There is no allegation that forged documents are used by applicants as genuine one. So far as the offence punishable under Section 420 of the Indian Penal Code is

6

concerned, essential ingredients of the offence are, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment or either description for a term which may extend to seven years, and shall also be liable to fine.

10. Here, it is not the case since inception that there was dishonest intention of applicants. Recital of the First Information Report clearly shows that dispute between applicants and the complainant is of civil nature. The complainant may file a suit for specific performance of contract. The ingredients of criminal offences are not made out. Moreover, applicants have already deposited amounts of transaction before this Court.

11. In this view of the matter, since we are inclined to allow the application, we pass following order:

ORDER

(1) The criminal writ petition is allowed.

(2) First Information Report No.671/2019 registered with Jaripatka Police Station, Nagpur for offences punishable under Sections 420, 468, and 471 read with Section 34 of the Indian Penal Code is hereby quashed and set aside.

7

(3) The Police Station Officer, Jaripatka Police Station, Nagpur shall inform non-applicant No.2 that applicants, as per orders of this Court dated 7.10.2019 and 21.10.2022, have deposited amounts Rs.2,40,000/- and Rs.8,80,000/-.

(4) Non-applicant No.2 Atul Laxmanrao Kshirsagar along with his relatives namely Vandana Santosh Kathane and Shilatai Banduji Urkude is at liberty to withdraw the said amount deposited by applicants.

Rule is made absolute in above terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DEO, J.)

!! BrWankhede !!

**BHUSHAN
RANA
WANKHEDE**

Digitally signed
by BHUSHAN
RANA
WANKHEDE
Date:
2022.11.21
19:07:05 +0530