

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

CRIMINAL WRIT PETITION No. 67/2022.

Sandeep Raghunath Thaware,
Aged about 50 years, Occupation
Business, resident of Misal Layout,
Nara Road, Nagpur.

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PETITIONER.

VERSUS

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

2.Tikeshwar Gautamrao Ghotekar.
Aged about – major, Occupation – Service,

3.Amol Tikeshwar Ghotekar,
Aged about - major, Occupation
Service,

Both residents of C/o. M.P.Dhopate,
Plot No.8, New Urvela Colony,
Vivekanand Nagar, Nagpur.

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RESPONDENTS.

Mr. S.A.Chaudhari, Advocate for the Petitioner.
Mr.S.M. Ukey, Addl.P.P. for Respondent No.1.
Mr.A.A. Dhawas, Advocate for Respondent Nos. 2 and 3.

CORAM : VINAY JOSHI, J.

DATE : JULY 13, 2022.

ORAL JUDGMENT :

By consent of the learned Counsel appearing for the respective parties, the matter is taken up for hearing and final disposal by issuing **Rule**, making the same returnable forthwith.

2. The petitioner complainant has called in question the Magistrate's order of dismissal of private complaint dated 31.07.2012, and consequential dismissal order dated 21.08.2021 passed by the learned Additional Sessions Judge in Criminal Revision No.427/2012. The private complaint was dismissed by the Magistrate by stating that the dispute is of a civil nature, as well as no prima facie case was made out to establish the offence of forgery.

3. Being aggrieved, the complainant has invoked the revisional jurisdiction of Sessions Court. The revision was initially decided without impleading complainant as a party. This Court has

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set aside the order of revisional Court and remanded to the Sessions Court for re-hearing the revision by impleading the complaint as party respondent. In the wake of such position, the revision was re-heard after impleading the complainant as a party respondent however, the revision was dismissed, meaning thereby the order of dismissal of the complaint was maintained. Being aggrieved by the said order, the complainant is before this Court.

4. Initially the complainant has filed an application bearing No.887/2011 in the Court of Magistrate in terms of Section 156[3] of the Criminal Procedure Code, seeking direction to the police to register first information report for the offence of forgery and cheating. It was set out in the complaint that, the complainant is a builder and developer. Both accused have jointly agreed to purchase a flat for total consideration of Rs.12 lakhs, out of which earnest amount of Rs.6 lakhs was paid. It was agreed that the balance consideration was to be paid at the time of execution of the sale deed. It is a case of the complainant [seller] that though time was the essence of contract, the accused [purchasers] have neither paid

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the balance amount, nor shown their willingness. Therefore, the complainant has terminated the contract by issuing legal notice.

5. In response, the complainant has received a reply notice from the accused stating that they have already paid the entire consideration of Rs.11.20 lakhs for which the complainant has issued receipts thereof. The complainant found that the copies of receipts, were forged and fabricated. The complainant specifically stated that neither he has executed those receipts, nor it bears his signatures. The complainant has filed a report to the police, on which enquiry was held, but, the police did nothing. Having no option, the complainant rushed to the Court of Magistrate for seeking directions to the police to register an offence of forgery and cheating in terms of Section 156[3] of the Code.

6. The Magistrate has not accepted the prayer for directions under Section 156[3] of the Code, but, by taking cognizance postponed the issuance of process in terms of Section 202 of the Code. The learned Magistrate has directed the police to investigate the matter and submit the report. On receipt of police report, the

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learned Magistrate on considering the entire material has dismissed the complaint under Section 203 of the Code by stating that no prima facie case of forgery and cheating was made out.

7. In the meantime the accused [purchaser] have approached to the District Consumer Forum putting their grievance against the complainant builder. Thereafter by seeking leave of the Consumer Forum have filed Civil Suit in the Court of competent jurisdiction for recovery of sum of Rs.11.20 lakhs, inclusive of disputed payment towards part consideration. The complainant has contested the suit on merits by stating that he has not executed those payment receipts. Before filing civil suit, the accused have obtained handwriting experts opinion about the receipts on which the handwriting expert has opined that there is no forgery as regards to the receipts. It is informed that the complainant who is defendant in the suit, has disputed the handwriting experts' report and had applied to the civil Court for sending the document to the government handwriting expert and at this stage, the civil suit is pending.

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8. Coming to the impugned order, the learned Magistrate has expressed that the police report does not state about the case of forgery. It is stated that the accused have applied to the Civil Court where the matter is subjudice and the issue is of civil nature. The learned Magistrate also ventured into expressing that on perusal of the disputed receipts it appears that the complainant has received the consideration amount. With such observation, it is opined that there is no prima facie material and thus, the complaint was dismissed.

9. The revisional Court has affirmed the dismissal order. The revisional Court held that the petitioner/complainant has not produced copies of disputed receipts in revision to support his contention. The said reason does appear to be apt as the revisional Court without perusal of the receipt has decided the revision. He ought to have called the copies of the impugned receipts from the party or would have called the record of the trial Court. The other reasons are about some procedural aspect. In short, the order of revisional Court does not stand to reason. Bare reading of the complaint manifestly makes out a prima facie case to proceed

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further.

10. It is alleged in private complaint, that the accused have prepared false and fabricated receipts. The Magistrate has chosen to take cognizance and thus, it was the requirement to see whether prima facie case to proceed further is made out. At this stage one has to only see whether there is sufficient material to proceed further and not to convict the accused. The Magistrate is expected to go through the complaint as a whole and find out whether the ingredients of the complaint makes out a cognizable case regarding forgery. The complainant stated that he has received copies of forged receipts along with the reply notice on which he learn about the preparation of false and fabricated documents. It is settled law that civil as well as criminal action can go hand in hand in certain circumstances. However, the facts are such that already the civil suit is pending in between the parties. The issue about forgery is also subject matter of lis before the Civil Court. Though the civil suit was filed subsequently, however, pleadings are complete as well as handwriting experts report has been obtained.

11. The learned counsel appearing for the accused by placing reliance on the decision of Supreme Court in case of **Rajeshbhai Muljibhai Patel and others .vrs. State of Gujarat and another – (Criminal Appeal No. 251-252 of 2020 dated 20.10.2020)** submitted that when similar issue is pending before the Civil Court, continuation of criminal prosecution amounts to abuse of process of Court. In the decision of Supreme Court in case of **Rajeshbhai Muljibhai Patel and others .vrs. State of Gujarat and another – AIR 2020 SC 818**, it is held that the issue as to the genuineness of receipts is pending in civil suit, therefore, the first information report ought not allowed to have been continued as it would cause prejudice to the interest of the parties and the stand taken by them in the civil Court.

12. Likewise in the decision of the Supreme Court in case of **Sardar Ali Khan .vrs. State of Uttar Pradesh and another – AIR 2020 SC 626**, a civil suit for cancellation of sale deed was filed. During the pendency of said suit, a criminal action was initiated alleging forgery. In that context, it is observed that when the matter of validity of sale deed is subjudice before the competent civil Court, it

is for the civil Court to decide whether the fraud is played or not, and therefore, a party cannot pursue criminal proceeding for forgery.

In another decision of Supreme Court in case of **Sardool Singh and another .vrs. Smt. Nasib Kaur – SCC 1987 Suppl. 146**, it is expressed that when Civil Court is seized with the question as regards to the validity of the Will, at this juncture, the respondent cannot be permitted to institute a criminal prosecution on the allegations that the Will is forged one. Inasmuch as, it is expressed that quashing of criminal action will not come in the way of instituting appropriate proceeding in future in case the civil Court comes to the conclusion that the Will is forged one.

13. Herein undisputedly the question about genuineness of disputed receipts is very much pending for adjudication before the Civil Court. Before Civil Court evidence would be led to establish the genuineness of Will, including evidence of expert, if any. In the wake of such position, if criminal proceeding is simultaneously allowed to go on, then it would be prejudicial to the interest of other side. No doubt, after disposal of the civil suit, if so advised, the

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party can resort to criminal remedy as held by the Supreme Court in case of Sardool (supra). Since the same issue about disputed receipt is pending before the Civil Court, at this stage it is unjust to allow parallel criminal prosecution.

14. Having regard to above facts the impugned order needs to be set aside on merits with a clarification that the complainant can resort his remedy after disposal of the civil suit. In view of above Writ Petition deserves to be partly allowed. The impugned order of dismissal of the complaint is set aside on merit but, it is held that the complaint is not maintainable on account of pendency of the civil suit. However, the complainant is at liberty to resort to criminal remedy after disposal of the civil suit. In such eventuality the learned Magistrate shall pass appropriate order depending upon the finding of the civil Court and observations made hereinabove.

15. Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE