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

CRIMINAL APPLICATION (APL) NO.897 OF 2017

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| 1. | Shri. Ramdas S/o Keshavrao Raut,
Age : 70 Yrs, Occu: Nil,
R/o. Godhani (Railway),
Tahasil and Dist: Nagpur. | (Ori. Accused) |
| 2. | Shri Suryabhan S/o. Vistari Dhobe,
Age: 72 Yrs, Occu: Nil,
R/o. Faras, Zingabai Takli, Nagpur. | (Ori. Accused) |
- PETITIONERS

// VERSUS //

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| 1. | Shri. Dadarao S/o Zapruji Dangore,
Age: 58 Yrs, Occu: Business,
R/o. Godhani (Railway),
Tahasil and Dist: Nagpur. | (Ori. Complainant) |
| 2. | The State of Maharashtra,
through Police Station Officer,
Koradi Police Station, Nagpur. | RESPONDENTS |

Mr. K. P Mahalle, Advocate for petitioners.
Mr. M. D. Samel, Advocate for respondent No.1.
Mr. S. M. Ghodeswar, APP for respondent No.2.

CORAM : AVINASH G. GHAROTE, J.
DATED : 05/01/2022

ORAL JUDGMENT :

Heard Mr. Mahalle, learned counsel for the petitioners and
Mr. Ghodeswar, learned APP for the respondent No.2. Mr. Samel,
learned counsel for the respondent No.1 is absent.

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2. It is contended that the respondent No.1, who was the owner of land bearing Survey No.525/1, situated at Mouza Godhani Tahsil and District Nagpur, had entered into an agreement with Murlidhar Co-operative Housing Society Limited for sale of the same on 26.12.1996. The petitioners are the President and Secretary of the said Society. It is contended that the said agreement did not fructify into a sale and the consideration of Rs.19,000/- paid under the said agreement by the Society to the respondent No.1 was received back, resulting in cancellation of the said agreement. The Society thereafter entered into an agreement with one Shalik Ramchandra Sarode in respect of the land of Survey No.144 and laid a layout thereupon and sold the plots to its members.

3. The respondent No.1 filed a dispute before the learned Co-operative Court claiming that under the terms of the agreement dated 26.12.1996, he was entitled to a plot of land in addition to the monetary consideration payable under the said agreement and since the agreement had fructified into a sale deed he was entitled for the said plot of land claiming that the land of Survey No.525/1 and that of Survey No.144 were one and the same properties. The learned Co-operative Court, by the Judgment dated 28.02.2012, dismissed the dispute and so also the contention of the respondent No.1, that he was

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entitled to plot No.6 in Survey No.260/1 (new No.144) and that in the agreement with the respondent No.1, Survey No.525/1 was wrongly mentioned, or that both Survey Nos.525/1 and 144 were in the same properties. An appeal carried by the respondent No.1 before the learned Co-operative Appellate Court bearing Appeal No.17/2012 came to be dismissed by learned Appellate Court by Judgment dated 11.04.2016 and Writ Petition No.4287 of 2016 against the same, came to be dismissed by this Court on 09.09.2019. It is thus contended that the plea on the basis of which the complaint was lodged by filing a complaint under Sections 405, 406, 415, 417, 418, 420, 463, 468, 470, 491 and 506 read with 34 of the Indian Penal Code was itself not tenable. An application for discharge filed by the petitioners, came to be allowed by the learned Trial Court by the order dated 19.03.2013 passed in RCC No.186 of 2002. The learned Appellate Court however by the impugned Judgment dated 28.06.2017, allowed the appeal and set aside the order of discharge as passed by the learned Trial Court/Judicial Magistrate First Class. It is therefore, contended that in view of the above fact position, the judgment of the learned Sessions Court, would not be legally sustainable, more so, in light of the confirmation of the finding of the learned Co-operative Court as well as the learned Co-operative Appellate Court by this Court in Writ Petition No.4287 of 2016, decided on 09.09.2019.

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4. A perusal of the Judgment of the learned Sessions Court indicates, that the Judgment of the learned Co-operative Court in Dispute No.1059 of 1999 dated 28.02.2012 nor of the learned Co-operative Appellate Court dated 11.04.2016, both of which rendered a finding that there was no agreement whatsoever between the respondent No.1 and the said Society has been considered by the learned Sessions Court while passing the Judgment dated 28.06.2017. Now when the above findings, have been confirmed by this Court by its order dated 09.09.2019 in Writ Petition No.4287 of 2016, the very basis for filing of the complaint by the respondent No.1 does not survive. This was the position also when the learned Sessions Court had rendered the Judgment dated 28.06.2017. In view of this position, the impugned Judgment dated 28.06.2017 passed by the learned Sessions Court in Criminal Appeal No.130 of 2013 cannot be sustained and the same is hereby quashed and set aside. Considering what has been held by the learned Co-operative Court as well as the learned Co-operative Appellate Court in their Judgments as indicated above, which stands confirmed by this Court in Writ Petition No.4287 of 2016, the order of discharge passed by the Judicial Magistrate First Class Court No. 6, Nagpur dated 19.03.2013 in RCC No.186 of 2002, is hereby restored.

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5. The application is accordingly is allowed, in the above terms. No costs.

Rule is made absolute in the above terms.

JUDGE

Sarkate