

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 95 OF 2023

Shivaji Sambhajirao Bansode

.. Applicant

Versus

Asha Vilas Veer and another

.. Respondents

Mr. Arvind S. Deshmukh, Advocate for the Applicant.

Mr. P. A. Dhakane, Advocate h/f Mr. S. E. Shekade, Advocate for
Respondent No. 1.

Mr. S. R. Yadav-Lonikar, APP for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 30th MARCH, 2023.

P. C. :-

. Learned advocate Mr. Dhakane holding for learned advocate Mr. Shekade for respondent No. 1 submits that, though initially the respondent No. 1 had requested him to appear on his behalf, however, now respondent No. 1 is not responding to the calls of learned advocate. Since respondent No. 1 is already served the matter can proceed further.

2. Heard learned advocate for the petitioner.

3. A challenge is raised to an order dated 17.01.2023 passed by the learned C.J.M., Beed issuing process against the petitioner for an

offence punishable under Section 420 of the Indian Penal Code (for short "I.P.C.") and directing to register the case as regular criminal case. Facts giving rise to the application in short are that, respondent No. 1 entered into an agreement with the present applicant for purchase of the plot in Survey No. 170 at Taraf Pingale, Beed. It is the allegation that, in the year 1988, the plot was purchased by this petitioner and entry was taken in the revenue record. In the sale deed, the plot was shown to be admeasuring 45×30 ft. The plot was sold for an amount of Rs. 16,00,000/- (Rs. Sixteen Lakh only) by way of sale deed dated 18.07.2017 bearing no. 3250. When the respondent No. 1 - complainant had been to the plot for taking possession, she found that the measurement shown by the petitioner was not matching with the actual plot as on some part of the plot drainage line is constructed by the Municipal Council and the actual plot is only of the size 45 ft. × 25 ft. It is not admeasuring 3420 sq. ft., however, the same is only of 2135 sq. ft.

4. On lodging of the complaint, the learned Magistrate directed police to hold an enquiry under Section 202 of the Code of Criminal Procedure (for short "Cr.P.C."). The police after holding an enquiry submitted a report that, the dispute is purely of civil nature and no criminal element is appearing. However, in spite of the said report,

now the learned Magistrate has issued process. The only observation by the learned Magistrate is that, since the plot size is less than plot size mentioned in the sale deed and therefore has come to a conclusion that, there is an element of cheating.

5. On this, learned advocate for the applicant submits that, in fact, it is a transaction of sale and purchase of open plot. No parties are expected to purchase the plot without visiting the plot or taking measurement of the exact plot. At the most this can be said to be a civil dispute. He specifically submits that, in fact, the plot was physically shown to respondent No. 1 and there is no question of cheating. He submits that, at the most, this is a civil dispute and no element of cheating is present.

6. This Court has considered the submissions. On going through the record, it is clear that, at the most the complaint is only about measurement of the plot. It is not the case that, the petitioner has taken the amount and has failed to execute the sale deed. The sale deed is very much executed pursuant to agreement. There is other aspect involved in the matter. On reading the complaint, it is seen that, there is only averment of giving complaint to the police station. However, there is no averment so far as compliance under Section 154 (3) of the Cr.P.C. After perusal of FIR, nothing is stated that respondent

No. 1 had reported this fact under Section 154 (3) of the Cr.PC. So also on this count, this Court finds that, order passed by the learned C.J.M. is not correct.

7. Considering the submissions and material on record, this Court finds that, no case of cheating is made out on the part of the applicant. Hence, this Court finds that, order of issuance of process dated 17.01.2023 passed by the learned C.J.M. is not legal and correct and the same deserves to be quashed and set aside. Hence, the following order.

8. The criminal application is allowed in terms of prayer clauses (B) and (B-1).

9. The criminal application is disposed off.

(KISHORE C. SANT, J.)

PS.B.