

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

917 CRIMINAL WRIT PETITION NO.474 OF 2020

**SHANKAR S/O. MURLIDHAR WALEKAR
VERSUS
MACHINDRA S/O. EKNATH WARE AND ORS**

Mr.A.G. Jadhav h/f. Mr.R.S. Sadaphule, Advocate for the petitioner.

**CORAM : KISHORE C. SANT, J.
DATED : 10.01.2023**

PC :-

01. The petitioner has challenged the order passed by the learned JMFC, Court No.13, Aurangabad dated 25.02.2020, by which the learned Magistrate has rejected the complaint filed by the petitioner for the offence punishable under sections 419, 420, 468, 471, 504 and 506 of the Indian Penal Code with prayer to issue process as well as seeking direction under section 156(3) of the Cr.P.C. to the police to carry out investigation.

02. Learned Magistrate after going through the complaint found that there is no criminal element in the allegation. The case appears to be of civil nature. From the complaint it further appears that he entered into an agreement of sale of plot No.48 from Gat No.74 admeasuring 140 sq.mtr. in favour of accused No.2. The accused thereafter entered into an agreement

with the complainant for sale of row house No.21-B, of Gat No.72/2, admeasuring 55.76 sq.mtr. He even prepared sale-deed in favour of the petitioner. There were certain typing mistakes in the sale-deed, which were pointed by the petitioner to the accused. However, thereafter said sale-deed was never presented in the office of Assistant Registrar of Stamps, on the pretext that the accused was not having sufficient amount for stamp duty and he left the office. However, it is alleged that accused never came back for registering the sale-deed, though it was prepared and ready for presentation. It appears that though first transaction is registered i.e. in respect of plot No.48 of which the petitioner was owner, in favour of accused No.2, however, further transaction agreed in respect of row house is not completed and presented for registration. It is on this background, complaint came to be allowed.

03. Seen the order of the learned Magistrate. He has rightly considered all the aspects involved in the matter. The learned Magistrate has also considered the judgment of the Hon'ble Apex Court in the case of **Inder Mohan Goswami Vs. State of Uttranchal, AIR 2008 SC 251** and considered definition of 'cheating' under section 451 of the IPC and came to the

conclusion that there is no cheating.

04. It is argued by the learned Advocate for the petitioner that in-fact under the pretext of sale-deed, the row-house the property of the petitioner is shown to have been transferred in favour of accused No.2. Thus, all the accused came together and deceived and cheated the petitioner. Therefore, it is stated that case is made out to issue process by the learned Magistrate.

05. On considering the submissions, this Court does not find merit in the complaint of the petitioner. The petition is, therefore, dismissed.

[KISHORE C. SANT, J.]