IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1047 OF 2018

SUVARNA W/O. TUKARAM BONDER AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Mr. V. V. Ingale, Advocate for the Applicants.
Mr. A. R. Kale, APP, for the Respondent – State.
Mr. A. T. Kanawade, Advocate for the Respondent No. 2.

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CORAM : SMT. ANUJA PRABHUDESSAI & R.M. JOSHI, JJ

DATE : MARCH 01, 2023

PER COURT :

1. At the outset, learned Counsel for the Applicants seeks leave to amend the prayer clause as to incorporate R.C.C. No.

2. Leave granted. Amendment to be carried out forthwith.

3. With consent, heard finally at the stage of admission.

4. This is an application under Section 482 of Cr.P.C to quash FIR No. 305/2017 registered with Anand Nagar Police Station, Osmanabad and R.C.C. No. 43/2019 pending on the file of learned JMFC, Osmanabad for

offences punishable under Sections 420, 468, 471, 120-B, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code.

5. Heard learned Counsel for the Applicants, learned APP and learned Counsel for the Respondent No. 2.

6. We have perused the records and considered the submissions advanced by learned Counsel for the respective parties.

7. The aforesaid crime was registered pursuant to the first information report lodged by the Respondent No. 2. FIR reveals that Tukaram Bonder, the husband of the Applicant No. 1, had entered into an agreement dated 25.11.2009 with Respondent No. 2 for sale of property under Gut No. 165, village Uttami Kayapur for sale consideration of Rs. 1,30,000/-. The Respondent No. 2 has alleged that he had paid Rs. 80,000/- as earnest money and the balance amount was to be paid at the time of execution of the sale deed, which was to be executed on 24.02.2010. The Respondent No. 2 has stated that the Applicant No. 7 had borrowed from him Rs.

18,500/-. Similarly, the applicant nos. 1 and 3 had borrowed Rs. 12,000/- to meet household expenditure. He claims that he has paid Rs. 1,15,000/-. In the meantime, said Tukaram Bonder, husband of the Applicant No. 1 expired. Since the Applicant Nos. 3 to 5 were minors, the sale deed could not be executed without prior permission of the Court. Accordingly, an application No. 256/2013 was made before the Court and Court had permitted sale on behalf of the minor children of deceased Tukaram. The Respondent no. 2 has alleged that the Applicants instead of executing the sale deed in his favour entered into sale transaction with Applicant no. 6 - Dipak Sangle. The Respondent No. 2 has further stated that the Applicants have refused to execute sale deed and further refused repay the earnest money. He claims that the Applicant Nos. 1, 2, 6, 7 and 8 and others also assaulted him and threatened to cause his death. On the basis of these allegations, the aforestated crime came to be registered.

8. The applicants are alleged to have committed offence under Section 420, 468 and 471 of IPC. In order

to apply Section 420 of IPC, the ingredients of Section 415, which defines cheating, have to be satisfied. In the case of *Deepak Gaba Vs. State of Uttar Pradesh, 2023 SCC OnLine SC 3*, the Hon'ble Apex Court held thus:

> *16. In order to apply Section 420 of the IPC, namely cheating and dishonestly inducing delivery of property, the ingredients of Section 415 of the IPC have to be satisfied. To constitute an offence of cheating under Section 415 of the IPC, a person should be induced, either fraudulently or dishonestly, to deliver any property to any person, or consent that any person shall retain any property. The second class of acts set forth in the section is the intentional inducement of doing or omitting to do anything which the person deceived would not do or omit to do, if she were not so deceived. Thus, the sine qua non of Section 415 of the IPC is "fraudulence", "dishonesty", or "intentional inducement", and the absence of these elements would debase the offence of cheating. Explaining the contours, this Court in Mohd. Ibrahim and Another v. State of Bihar and Others, observed that for the offence of cheating, there should not only be cheating, but as a consequence of such cheating, the accused should also have*

dishonestly adduced the person deceived to deliver any property to a person; or to make, alter, or destroy, wholly or in part, a valuable security, or anything signed or sealed and which is capable of being converted into a valuable security.

9. It would also be relevant to refer to the decision in *Sheila Sebastian Vs. R. Jawaharaj and Another, (2018) 7 SCC 581*, wherein it has been held thus:

19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463, IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and *until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete*

20. The key to unfold the present dispute lies in understanding Explanation 2 as given in Section 464 of IPC. As Collin J., puts it precisely in Dickins v. Gill, (1896) 2 QB 310, a case dealing with the possession and making of fictitious stamp wherein he stated that "to make", in itself involves conscious act on the part of the maker. Therefore, an offence of forgery cannot lie against a person who has not created it or signed it.

21. It is observed in the case Md. Ibrahim and Ors. vs. State of Bihar and Anr., (2009) 8 SCC 751 that:

"14...a person is said to have made a 'false document', if

(i) he made or executed a document claiming to be someone else or authorised by someone else; or

(ii) he altered or tampered a document; or

(iii) he obtained a document by practicing deception, or from a person not in control of his senses."

22. In Md. Ibrahim, this Court had the occasion to examine forgery of a document purporting to be a valuable security (Section 467, IPC) and using of forged document as genuine (Section 471, IPC). While considering the basic ingredients of both the offences, this Court observed that to attract the offence of forgery as defined under Section 463, IPC depends upon creation of a document as defined under Section 464, IPC. It is further observed that mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under Sections 467 and 471, IPC even if title of property did not vest in the executant.

23. The Court in Md. Ibrahim observed that:

"16. ...There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the

property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

24. In Mir Nagvi Askari vs. Central Bureau of Investigation, (2009) 15 SCC 643, this

Court, after analysing the facts of that case, came to observe as follows:

"164. A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the said section is also not applicable to the present case. The third and final condition of Section 464 deals with a document, signed by a person who due to his mental

capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.

25. Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

26. The definition of "false document" is a part of the definition of "forgery". Both must be read together. 'Forgery' and 'Fraud' are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no *finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that 'false document'. Hence, neither respondent no.1 nor respondent no.2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.*

10. In the instant case, the material on record reveals that the husband of the Applicant No. 1 had entered into an agreement with Respondent No. 2 for sale of property and he had received earnest money from the Respondent No. 2. The records reveal the executant died before executing the sale deed. Since the children of the executant were minors, they could not execute the sale deed without prior permission of the Court. The records reveal that the applicant had in fact filed application before the Court seeking permission to sell

the property on behalf of the minor. These facts clearly indicate that there was no intention to deceive the Respondents. The fact that the Applicants for some other reason did not execute the sale deed and/or that they sold the property to the Applicant No. 6 would not *per se* constitute offence under Section 420 of IPC. Furthermore, there is absolutely no material n record to indicate that the Applicants herein had committed forgery within the meaning of Section 463 of IPC.

11. The dispute between the parties is essentially of civil nature. The records reveal that the Respondent No. 2 has already filed a suit for specific performance. As regards allegations of assault, it is seen that there is absolutely no material on record to indicate that the Respondent No. 2 had suffered any injuries. In our considered view, the uncontroverted statements in the FIR as well as the material gathered in the course of investigation, does not discloses commission of cognizable offence. The case is fully covered by illustrations (1) and (3) in the case of State of Haryana and Others Vs. Bhajan Lal and Others,

1992 AIR SC 335. In such circumstances, continuation of criminal proceedings against these Applicants would be sheer abuse of the process of Court.

12. In the result, the Application is allowed in terms of prayer clause 'B'. Consequently, FIR No. 305/2017 registered with Anand Nagar Police Station, Osmanabad and R.C.C. No. 43/2019 pending on the file of learned JMFC, Osmanabad for offences punishable under Sections 420, 468, 471, 120-B, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code are hereby quashed.

(R.M. JOSHI, J.) **(SMT. ANUJA PRABHUDESSAI, J)**