

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.514 OF 2023

Sou Manisha Jalindar Narwade & others

Petitioners

Versus

The State of Maharashtra & others

Respondents

Mr. P. P. Kothari, Advocate for the petitioners.

Mr. G. O. Wattamwar, APP for the State.

Mr. M. K. Bhosale, Advocate for respondent No. 2.

CORAM : R. M. JOSHI, J.

DATE : 12th SEPTEMBER, 2023.

PER COURT :

1. This petition is filed for quashment of RCC No. 288/2017. Petitioners are accused persons against whom process has been issued by learned Magistrate for offence punishable under Section 420 of Indian Penal Code by order dated 21st September, 2019.

2. Respondent No. 2 is father of petitioner No. 2 and brother of petitioner No. 3. Petitioner No. 1 is wife of petitioner No. 3 and sister-in-law of respondent No. 2. Respondent No. 2 filed complaint before the Magistrate on 11th April, 2017 alleging that there is joint Hindu family consisting of complainant and accused persons. There is further allegation that the said joint family is having ancestral

property and pursuant to the partition between the father of the complainant and his brothers, the property bearing Gat No. 168 is mutated in the name of his father i.e. accused No. 2. There is specific averment in the complaint that till the date of filing of the complaint, there is no oral partition or partition by metes and bounds. It is alleged by the complainant that accused No. 2 i.e. his father, in collusion with accused No. 3 Pankaj, has sold the property admeasuring 47.50 R from Gat No. 168 and 53.50 R from Gat No. 169 to accused No. 1 by executing registered sale-deed dated 16th August, 2012 for consideration of Rs. 2,32,500/-. Accused No. 3 and 4 were witness to the said document. There is further allegation that without there being any partition of the properties of joint family, in order to deny right of the complainant in the said property, the said transaction has taken place.

3. There is further allegation/averment in the complaint that this transaction came to the knowledge of complainant in June 2014. It is claimed by complainant that it was agreed by accused no. 1 and 6 that they will partition the properties and the share of the complainant would be given to him provided he repays the loan in his

name. Accordingly, loan was repaid on 30th June, 2016 but inspite of the same, the partition was not effected.

4. Learned counsel for petitioner submits that even if complainant is accepted as it is, it does not make out any offence of whatsoever nature much less offence of cheating. It is his submission that admittedly, the property stands in the name of accused No. 2 who executed sale-deed in question which is a registered document. It is his further submission that merely because partition of joint family property is not effected it does not become offence.

5. Learned counsel for complainant/respondent No. 2 submits that in the complainant as well as in the verification by complainant, it is specifically stated that he was induced to repay the loan and for that purpose he was assured of partition of property and giving his share to him. Since there was non-compliance of the said assurance, he contends that it amounts to offence of cheating. It is further stated that the father of complainant has executed a sham document in favour of his daughter-in-law which according to him, amounts to offence under Section 420 of Indian Penal Code.

To support his submission that merely because a transaction is civil in nature no criminal offence can be made out, he placed reliance on judgment of Hon'ble Apex Court in case of Indian Oil Corporation vs. NEPC India Limited and others, **(2006) 6 Supreme Court Cases 736**.

6. There cannot be any dispute made about the preposition laid down by the Hon'ble Apex Court that there could be cases such as in cases of breach of terms of contract, civil as well as criminal remedy may be available for the party and it may be open for such party to avail both remedies even simultaneously. However, in order to sustain criminal proceeding, there has to be an offence made out against accused. Perusal of the complaint herein shows that the properties in dispute are joint family properties and that they stand in the name of father of the complainant. It is known concept of Hindu Law that the co-parcenary properties are permitted to be sold by Karta of joint family for legal necessity of family. It is not the case of complainant that his father did not have any right to sell the property in question to any one as he was not Karta of the joint family nor it is claimed that there was no legal necessity for its sale. Pertinently, the document i.e. registered sale-deed is executed in the year 2012. The knowledge of the said document as mentioned by the

complainant is of the year 2014. In such circumstances, though it could be open for the complainant to challenge the validity of said sale-deed, by no stretch of imagination this can be called as an offence more particularly offence punishable under Section 420 of Indian Penal Code as essential ingredients of Section 415 to constitute cheating are absent.

7. With regard to allegation that in the year 2016 some assurance was given to the complainant regarding partitioning of properties and to give share to him subject to he repays loan of Rs. 1,87,500/-, non compliance of such assurance at the most will give a cause of action for the complainant to file suit for partition. There is nothing on record to indicate that any other transaction has taken place pursuant to the said assurance. Needless to say that such assurance even if given in 2016 would have no bearing on the execution of sale deed in year 2012.

8. Having regard to the aforesaid fact that the right of accused No. 2 i.e. father of complainant to sell property is not in dispute, merely because the property is sold to daughter-in-law it does not become an offence. In such situation, prima facie, no

offence punishable under Section 420 of Indian Penal Code is made about against the accused. In the result, the petition is allowed. RCC No. 288/2017 pending before the learned Judicial Magistrate First Class, Ahmednagar stands quashed.

9. Pending application if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb