

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

CRIMINAL WRIT PETITION NO.829 OF 2019

1. Kailas Rameshwar Agrawal,
Age : 56 years, Occ: Business,
2. Vijaya Suresh Agrawal,
Age : 52 years, Occ: Business,
3. Sangita Satish Agrawal,
Age : 52 years, Occ: Business,
4. Beena Vijay Agrawal,
Age : 48 years, Occ: Business,
5. Vijay Rameshwar Agrawal,
Age : 58 years, Occ : Business

(All R/o Kasturi Palace,
Weekly Market, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon)

...Petitioners

Versus

1. The State of Maharashtra
2. Ravindra Murdlihar Attarde,
Age : 62 years, Occ : Business,
R/o. 6, Shakuntal, Patel Nagar,
Jalgaon, Tq. & Dist. Jalgaon.
And alternate address:
Starglaze Precitech Pvt. Ltd.
Additional Jalgaon, Industrial
Area MIDC, Mehrun, Jalgaon
Tq. & Dist. Jalgaon.

...Respondents

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Mr. H.P. Randhir h/f Mrs. Chaitali Chaudhari Kutti,
Advocate for the Petitioners.

Mr. A.R. Kale, APP, for the Respondent – State.

Mr. S.P. Brahme and Mr. M.S. Shah, Advocate for
Respondent No. 2.

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

DATE : JANUARY 03, 2023

PER COURT :

1. With consent of learned Counsel appearing for respective parties, matter is heard finally at the stage of admission.

2. This is a Petition filed under Article 226 & 227 of the Constitution of India read with Section 482 of Cr.P.C for quashing FIR no. 0258 of 2019 registered with MIDC Police Station, Jalgaon for the offences punishable under Section 420 read with 34 of the Indian Penal Code, 1860 and consequential charge-sheet no. 7/2020 (R.C.C. No. 192/2019) pending on the file of Learned JMFC, Jalgaon.

3. We have perused the record and considered the submissions advanced by learned Counsel appearing for respective parties.

4. The short point for consideration is, whether the first information report and the other records disclose commission of offence under Section 420 read with Section 34 of the Indian Penal Code.

5. The record reveals that the Petitioners herein were the lessees of plot no. F-28, MIDC, Jalgaon admeasuring 5026 sq.mts. The Petitioners entered into an agreement dated 04.09.2017 with the Respondent No. 2 for transferring leasehold rights in respect of said plot in his favour. Pursuant to the said agreement, the Respondent No. 2 paid an amount of Rs. 21 lacs to the Petitioners and the deed of assignment was to be executed within three months from the date of agreement. The record further reveals that the deed of assignment was in fact executed on 01.10.2018 and before the said deed could be registered, brother of the Petitioner sent an email to the Respondent No. 2 claiming that he was in possession of the said plot. Claim put-forth by the brother of the Petitioners caused hindrance in registration of the deed of assignment. Being aggrieved, the Respondent No. 2 lodged first information report alleging that the Petitioners had entered into an agreement and accepted an amount of Rs. 21 lacs by misrepresenting that they were in possession of the property.

6. It is not in dispute that the subject land belongs to MIDC and the said land was leased to a partnership firm namely, Amit Steel Rolling Mill. The Petitioners as well as Ajay Agrawal, who is one of the brothers of the Petitioners, was a partner of the Amit Steel Rolling Mill. The record reveals that by retirement deed executed on 19th December, 1987, the brother Ajay Agarwal had retired and the present Petitioners continued to be the partners of the said partnership firm. The retirement deed reveals that the parties had agreed that the continuing partners would be at liberty to carry out the business under the name and style of M/s. Amit Steel Rolling Mill and retiring partner would have no objection for the same. The letter dated 30.08.2018 of MIDC also reveals that the lease was originally in the name of the Petitioners as well as Ajay Agarwal. The subsequent transfer was only in the name of Petitioners herein.

7. The aforesaid material on record reveals that the Petitioners herein were holding leasehold rights in respect of the subject land. The Petitioners had

cooperated with the Respondent No. 2 in recording his name as transferee. In fact the name of the Respondent No. 2 has been recorded in the records of the MIDC as a transferee. The records reveal that the deed of assignment of executed, however the deed was not registered due to the objections raised by the brother of the Petitioners. It is stated that the Respondent No. 2 has already instituted a suit for specific performance.

8. The question is whether non-registration of deed of assignment would constitute offence of cheating. In Vijay Kumar Ghai & Ors. Vs. The State of West Bengal and Ors reported in (2022) 7 SCC 124, the Hon'ble Supreme Court in para 38 has observed that *"There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this Court in Hridaya Ranjan Prasad Verma v. State of Bihar¹, the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest*

¹ (2000) 4 SCC 168

intention is the basis of the offence of cheating."

9. In the instant case, the FIR and the charge-sheet do not disclose that the Petitioners had culpable intention to cheat at the time they had agreed to assign the lease rights in favour of the Respondent No. 2. It is not the case that the Petitioners had entered into the agreement with malafide intentions. On the contrary, the records indicate that the Petitioners have all throughout cooperated in transferring the lease rights in favour of Respondent No. 2. In such circumstances, mere failure or the delay caused in registration of deed of assignment in view of objections raised by the brother of the Petitioners, would not constitute offence of cheating.

10. In view of the above facts and circumstances, continuation of the criminal proceedings against the Petitioners would be an abuse of the process of law. Hence, the Petition is allowed in terms of prayer clause 'B'. Consequently, FIR no. 0258 of 2019 registered with MIDC Police Station, Jalgaon for offence punishable under Section 420 read with 34 of the Indian Penal Code, 1860 and consequential charge-

sheet no. 7/2020 (R.C.C. No. 192/2019) pending on the file of Learned JMFC, Jalgaon, are hereby quashed and set aside.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J)