

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.199 OF 2022

Dr. Gangadhar s/o. Vithoba Kayande,
Age 52 years, Occu. Service,
R/o. Pancham, Savarkar Nagar,
Gangapur Road, Nashik,
District Nashik

.. Applicant
(Original complainant)

Versus

1. Ramesh s/o. Rambhau Sose (Dead)

2. Sau. Sheela w/o. Ramesh Sose,
Age Major, Occu. Household,
R/o. Shrikrushna Nagar, MAHADA Colony,
Jalna, Taluka and District Jalna

3. Banarasidas Ramkisan Jindal,
Age Major, Occu. Business,
R/o. Anand Nagar, College Road,
Jalna, Taluka and District Jalna

4. The State of Maharashtra
Through Police Station, Kadim Jalna,
Taluka and District Jalna

.. Respondents
(R.No.1 to 3 original
accused)

...

Ms. Aummaheshwari S. Jadhav, Advocate for Applicant;
Mr. Swapnil S. Rathi, Advocate for Respondent No.2;
Mr. Mahesh R. Sonawane, Advocates for Respondent No.3;
Mr. S. B. Narwade, A.P.P. for Respondent No.4/State

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CORAM : S. G. MEHARE, J.

DATE : 20-06-2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the parties.

2. The applicant/original complainant has preferred this revision against the judgment and order passed by the learned Additional Sessions Judge, Jalna, in Sessions Case No.31 of 2015 dated 30.03.2022, confirming the judgment and order of acquittal passed by the learned Chief Judicial Magistrate, Jalna, in Regular Criminal Case No.677 of 2007, dated 07.03.2015, for the offences punishable under Sections 120, 405, 406, 468, 469, 474, 201 read with Section 34 of the Indian Penal Code.

3. The complainant had a case that he and his sister/respondent No.2 had an agreement to sell with respondent/accused No.3 Banarasidas Ramkisan Jindal. The agreement was notarized. The complainant had paid consideration to accused/respondent No.3 through respondent No.1 (deceased) and accused/respondent No.2. However, they breached his trust, and they got executed the sale deed of land in their favour. All the accused/respondents colluded with each other and deprived the complainant of his right to purchase the property. It has also been alleged that since the original agreement to sell was in the possession of respondents Nos.1 and 2/accused to deprive the applicant/complainant of his right to purchase the property, they burnt it and thereby caused the loss to the complainant.

4. The learned counsel for the applicant would submit that the complainant had a specific case of disappearing the evidence by

burning the agreement to sell. It was the evidence itself of cheating. She would also argue that the notary public was also examined. There was an agreement between the complainant and the accused/present respondents. She would vehemently argue that considering the circumstantial evidence, the prosecution had proved that there was an agreement amongst them, and it was made to disappear. The photocopy of the said agreement was placed on record. The learned Chief Judicial Magistrate Jalna did not consider it. The doctrine of circumstantial evidence has been totally ignored in this case. The learned Chief Judicial Magistrate, Jalna, ought to have read the evidence as a whole, but it was read in piecemeal. The Investigating Officer has categorically deposed before the Court that in his investigation, he was satisfied that there was sufficient material against the accused. She would rely on the case of ***Jamuna Chaudhary and others Versus State of Bihar, (1974) 3 Supreme Court Cases 774*** and argue that the evidence of Investigating Officer cannot be thrown away as it has an evidential value. She prayed to allow the revision application and sent the matter back to the Court of the learned Chief Judicial Magistrate, Jalna, for rewriting the judgment.

5. Per contra, the learned counsel for the respondents/accused vehemently argued that the fact of the agreement of sale had not been proved. The complainant had concocted the story and created a false agreement to sell. Though the photocopy was

placed on record, notice to produce the original was not served upon any of the accused. The complainant has given the material admissions in his cross-examination that he had pleaded in the complaint that he was suspicious that accused No.1 might have destroyed the evidence. Upon reading the evidence as a whole, the prosecution did not prove the case beyond a reasonable doubt. A civil suit filed by the complainant has also been dismissed as he did not prove the transaction. The impugned judgment and order is legal, correct and proper. There are no grounds to warrant interference with the impugned judgment and order. The case law relied upon by the applicant/complainant is not relevant to the facts of the case, and no ratio as such is laid down in the said case.

6. At the outset, the burden was on the complainant to prove that there was a contract as such. He came up with a case that respondent No.1 (deceased) had destroyed the evidence, i.e. original agreement to sell. He produced a photocopy of the so-called agreement to sell, but no notice to produce the original agreement to sell or admit the contents of the photocopy was served upon the respondents/accused; therefore, he did not prove it by secondary evidence.

7. The learned Chief Judicial Magistrate, Jalna, has observed that the evidence of prosecution witnesses Nos.2 and 4 reveals

that the notarized document i.e. agreement to sell, was with the complainant. Therefore, the case of the prosecution that the original was lying with present respondent No.2/accused was disbelieved. The prosecution did not prove that the complainant paid money to the accused/respondent No.1 (deceased) for paying it to respondent No.3.

8. Upon reading the judgment and order, no infirmities or errors appear on the face of the record. The evidence appears to have been correctly appreciated. The prosecution has failed to prove the case beyond a reasonable doubt. The civil suit of the complainant, as argued by respondents/accused for specific performance of the contract, is dismissed; however, the appeal against the said judgment and order is pending. However, in a criminal trial, the prosecution has to prove the case beyond a reasonable doubt.

9. The prosecution has failed to prove the case beyond the reasonable doubt. This Court is satisfied that there are no grounds to warrant interference with the impugned judgment and order.

10. As far as the case of **Jamuna** (supra) is concerned, the Hon'ble Supreme Court has discussed the duty of the Investigating Officers that he has to bring out the real unvarnished truth. The Investigating Officer is the evidence collecting agent, and he has to conform his opinion on the basis of evidence collected by him that a triable case is made out. The evidence submitted by him

with the charge sheet shall not be accepted as gospel truth. The prosecution has to prove the case by examining the witnesses before the Court. The facts of the case of **Jamuna** (supra) appear not relevant to the facts of the present case.

11. The revision application deserves to be dismissed for the above reasons. Hence, the order:-

ORDER

- i) The revision application stands dismissed.
- ii) Rule stands discharged.

**(S. G. MEHARE)
JUDGE**

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