

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

CRIMINAL WRIT PETITION NO.953 OF 2019

- 1) Padma Rajendra Agrawal
Age 55 years, Occu. Agri. & Business
- 2) Rajendra Mohanlal Agrawal,
Age 56 years, Occu. Agri. & Business
- 3) Kshitij Rajendra Agrawal
Age 28 years, Occu. Agri. & Business

All R/o 1342, Lane No.5,
Dhule, District Dhule

... **PETITIONERS**

VERSUS

- 1) The State of Maharashtra
through the Police Inspector,
Dhule City Police Station,
District Dhule
(Copy to be served on the
Public Prosecutor, High Court of
Bombay, Bench at Aurangabad)
- 2) Sanjay Kashinath Agrawal,
Age 59 years, Occu. Business,
R/o Gauri Bhavan, Ramwadi,
Malegaon Road, Dhule

... **RESPONDENTS**

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Mr. R.N. Dhorde, Senior Counsel with
Mr.S.N. Suryawanshi, Advocate for petitioners
Mr. A.R. Kale, A.P.P. forrespondent no.1.
Mr. V.D. Hon, Senior Counsel with
Mr. Amol S. Sawant, Advocate for respondent No.2.
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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

Date of reserving judgment : 27th June, 2023

Date of pronouncing judgment : 30th June, 2023

JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith and taken up for final hearing at admission stage with the consent of learned counsel for the parties.

2. By filing this Writ Petition, the petitioners have sought to quash the R.C.C. No.639/2016, pending before the Chief Judicial Magistrate, Dhule for the offences punishable under Sections 420, 120-B, 468 read with Section 34 of the Indian Penal Code.

3. A gist of the prosecution case is that, the petitioners herein dishonestly induced the informant to enter into a transaction of agreement for sale, made him part with a sum of Rs.51 Lakhs and then refused to execute the sale deed and as such, committed an offence of cheating and the related offences.

4. Facts and the submissions made by learned Senior Counsel appearing for the petitioners are not adverted to in extenso at this stage, so as to avoid repetition.

5. The learned A.P.P. and learned Senior Counsel representing the respondent informant would, on the other hand,

submit that, the petition is not maintainable since the petitioners had earlier challenged the same F.I.R. unsuccessfully. They would further submit that, the petitioners, within 7 days of Memorandum of Understanding (MoU), executed with the original owners (discharged co-accused), induced the informant to enter into the transaction of agreement for sale. The transaction between the petitioners and the original owners was for not more than Rs.30 Lakhs. How could the very property fetch a price of Rs.85 Lakhs within 7 days. The present petitioners and the co-accused had been to the residence of the informant to urge him to purchase the land as it adjoined the land held by the informant. The learned counsel took us through the chronology of events to ultimately urge for dismissal of the writ petition since there is material to proceed against the petitioners herein.

6. Considered the submissions advanced. Perused the F.I.R. and the papers of investigation. It is true, the petitioners have been unsuccessful in their earlier Writ petition filed for quashment of the very F.I.R. There is, however, change in the circumstances. The crime registered on the basis of the F.I.R. came to be investigated and the charge sheet filed. As such, the same gives the petitioner a fresh cause of action to urge the Court to have a relook at the F.I.R. in the light of the material collected during investigation of the crime. In our view, therefore, the Writ Petition is

very much maintainable.

7. Section 415 of the Indian Penal Code reads thus :

“415. Cheating :- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation:- A dishonest concealment of facts is a deception within the meaning of this Section.”

8. The land involved is Survey No.73/1/D/B, admeasuring 91 R, situated at Dhule. It was owned by Bharati Bapat and Ajit Gokhale. The said land was mortgaged for a loan raised by a friend of the land owner Ajit Gokhale in September 2004. The owners, namely Bharati Bapat and Ajit Gokhale had even agreed to sell the said land to “Ganpule Datta Mandir Sansthan for Rs.15 Lakhs. It was a transaction dated 21/4/2009. On 21/5/2013, Bharati Bapat and Ajit Gokhale entered into a MoU with the petitioner No.1 Padma Agrawal. The terms of MoU indicate that the applicant Padma Agrawal had agreed to pay Rs.15 Lakhs towards clearing the loan raised on the mortgage of the subject land. She further agreed to pay the sum of Rs.15 Lakhs to the original owners.

In consideration thereof, Bharati Bapat and Ajit Gokhale agreed to sell the subject land to the petitioner Padma Agrawal or any other person at her instance.

9. The gist of the allegations in the F.I.R. is that, the petitioners (petitioner No.2 is the husband of petitioner No.1 and petitioner No.3 is their son) approached the informant Rajendra at his residence and put up a proposal to sell the land to him. The petitioner represented the informant that the land adjoined his own land situated at M.I.D.C. and it would, therefore, be beneficial for him to purchase the said land. It is further alleged in the F.I.R. that, on 26/5/2013, the petitioners along with Bharati Bapat and Ajit Gokhale (original owners of the land) met the informant at his residence. The original owners represented the informant that they have agreed to sell the land to petitioner No.1 Padma Agrawal or to any other person to be directed by her. According to the informant, he fell prey to the representation made by the petitioners and the owners of the land. He, therefore, entered into a transaction of agreement for sale. It was between him and the petitioner No.1. he agreed to purchase the land for Rs.85 Lakhs. He even paid the sum of Rs.50 Lakhs by cheque and Rs.50,000/- in cash towards part payment (earnest money). It was an agreement for sale dated 30/5/2013.

10. There is document dated 22/7/2023 indicating the

agreement for sale of the very land executed between one of the original owners – Bharati Bapat and Ganpule Datta Mandir came to be revoked. There is also further material to indicate the petitioner No.1 to have had paid a sum of Rs.20 Lakhs to the original owner. An amount of Rs.15 Lakhs thereof was disbursed towards clearing one of the encumbrances. Meanwhile, Bharati Bapat and Ajit Gokhale met with an accident. There is further record to indicate the original owners to have cancelled the MoU executed in favour of the petitioner No.1. A public notice to that effect was given in March 2015. There has been exchange of notices between the two.

11. The question is as to whether the petitioners had really dishonest intention since beginning so as to induce the informant to enter into a transaction of agreement for sale. Although to this effect there are averments in the F.I.R., there is record to indicate that on clearance of one of the encumbrances on the subject land, the petitioner No.1 had time and again requested the informant to get the transaction completed, at least to the extent of half of the land. She was ready to execute a document in that regard. It was also her case that, she would complete the transaction once the land is cleared of another encumbrance. It is the informant who refused to buy/ purchase half of the land. This fact materially affected the case of the informant that the petitioner No.1 had fraudulently

induced him to enter into a transaction. Although there are averments in the F.I.R. to suggest the present petitioners had conspired with the original owners to induce him to enter into an agreement for sale, the informant himself gave the investigating officer a supplementary statement dated 1/10/2016 i.e. about four months after registration of the F.I.R., stating therein that the land owners namely Bharati Bapat, Ajit Gokhale and Nandkishor Adharkar, co-accused named in the F.I.R., to have not duped him. This subsequent statement of the informant casts a serious doubt over his case prepounded in the F.I.R. that the present petitioners and Bharati Bapat and Ajit Gokhale had conspired to cheat him. It is true that the land was sold for Rs.20 Lakhs to Nandkishor Adharkar, father-in-law of Ajit Gokhale. It would also be surprising as to how the land that was agreed to be sold for little over about Rs.85 Lakhs was sold for Rs.20 Lakhs two years thereafter. We, however, did not find any material to indicate the present petitioners and the original owners to have been privy to a criminal conspiracy as has been alleged in the F.I.R. The respondent/ informant himself later on gave a supplementary statement, admitting the land owners to have committed no offence and, therefore, their names may be dropped. There is further record to indicate the petitioner No.1 to have filed the suit for specific performance of agreement for sale/ MoU against the original owner and subsequent purchaser. There is further record to indicate the subsequent purchaser to

have sold the very land for Rs.20 Lakhs to real brother of the informant (although given in adoption). As such, the facts indicate that, post registration of the crime, the informant has entered into some kind of understanding with the original owners and even subsequent purchasers. We do not find any material to suspect genuineness of transaction between the petitioner No.1 and the original owners at first instance and subsequent transaction between the petitioner No.1 and the respondent/ informant. The entire facts and circumstances suggest it being a dispute of civil nature. Two/ three suits have been pending between the parties. In the facts and circumstances of the case, allowing the petitioners to face the prosecution based on such kind of material would be an abuse of process of Court. We are, therefore, inclined to allow the Writ Petition. Hence the order :

ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clause (B).
- (ii) Rule made absolute in above terms.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-