

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

53 CRIMINAL WRIT PETITION NO.1408 OF 2022

**SAYYAD MAHBOOB S/O. ABDUL RAHEMAN TAMBOLI
VERSUS
PURUSHOTTAM JAGANNATH BAHETI AND ANOTHER**

Mr.K.T. Shirurkar, Advocate for the petitioner.
Mr.H.I. Pathan, Advocate for respondent No.1.
Mrs.D.S. Jape, APP for the respondent/State.

**CORAM : KISHORE C. SANT, J.
DATED : 11.04.2023**

PC :-

01. Heard learned Advocates for both the sides. With the consent of the parties the petition is taken up for final disposal at the stage of admission.

02. The petitioner had lodged a proceeding in the Court of learned JMFC, Ahmedpur bearing Criminal Case No.354 of 2016 on the allegation that the respondent No.1 entered into an agreement with him, who is owner of the land in Survey Nos.2/3/4 and 2/3/1, admeasuring 23 R for an amount of Rs. 1,63,00,000/-. An amount of Rs.13 lakhs was paid in cash on 04.10.2014. It is further alleged that thereafter again he paid an amount of Rs.60 lakhs in cash. Though he requested for receipt of the amount, respondent No.1 refused to give receipt saying that he will have to pay income tax on that amount. The

petitioner believed in him and even paid further amount to him in installments. Total amount of Rs.1,28,00,000/- is paid. However, no receipt was given. Respondent No.1 was only maintaining dairy with him in which he used to make entries. However, thereafter, he refused to execute sale-deed. It is thus alleged that respondent No.1 has committed an offence punishable under sections 406, 409, 420 of the Indian Penal Code. The petitioner went to police station to lodge a complaint, however, the police refused to take complaint. Thereafter, he made representation even to the Superintendent of Police. However, no cognizance was taken and therefore he filed the complaint in the Court.

03. The learned Trial Court on receiving complaint, directed inquiry under section 202 of the Cr.P.C. The police submitted a report after inquiry and submitted that the dispute appears to be purely a dispute of civil nature. The learned Trial Judge after considering the report under section 202 of the Cr.P.C. and looking to the nature of the allegation came to a conclusion that it is only a dispute of civil nature. No dishonest intention since inception is seen in the transaction. In this case what appears is only breach of condition and that is not cheating. He dismissed the complaint under section 202 of the

Cr.P.C. by his order dated 05.07.2019.

04. The petitioner, thereafter, preferred a revision to the Court of learned Sessions Judge, Ahmedpur bearing Criminal Revision Application No.4 of 2019. The learned Sessions Judge, Ahmedpur by judgment and order dated 29.07.2022 dismissed the revision by confirming the order passed by the learned Trial Court. The learned Sessions Court also recorded that the transaction was in the nature of agreement to sale. The amount was paid in lieu of agreement of sale and therefore at the most it can be said to be breach of condition of agreement, attracting civil consequence and no offence is made out.

05. Aggrieved by the judgment and order passed by the learned Sessions Court, the petitioner has approached this Court. The learned Advocate for the petitioner submits that under false pretext of agreement, the petitioner is made to part with huge amount of Rs.1 Crore 28 lakhs without giving any receipt. This itself shows that since inception there was intention to cheat the petitioner. He further submits that in the complaint clearly a case is made out attracting offence punishable under sections 406, 409, 420 of the

IPC. He submits that the petitioner was made to believe by respondent No.1 saying that since he will have to pay income tax and under that pretext he did not issue a receipt. He further submitted that all the details of giving the amount are stated in the complaint. He submits that there is also a rough diary maintained by the respondent. He further submits that when the petitioner insisted for the execution of sale-deed, respondent No.1 told that he has received only Rs.13 lakhs and told him to pay remaining amount so as to execute a sale-deed. He submits that this conduct clearly shows that the petitioner is cheated. At last he submitted that respondent No.1 has not filed a suit seeking declaration and injunction against the petitioner. This clearly shows that only to cover up this illegality, now he has filed a suit. This entire conduct of respondent No.1 shows that he has done all these things with dishonest intention. Merely because civil remedy is available is no ground to dismiss the criminal complaint. The consequences under criminal law are different than civil law. Each remedy is an independent remedy and a person is free to chose his remedy under the law. He thus submitted that both the Courts below have committed illegality by holding that because civil remedy is available, no criminal case is made out and prays for setting aside the order passed the learned Sessions Judge with direction to proceed with the Criminal

Case No.354 of 2016 in accordance with law.

06. The learned Advocate for respondent No.1 submits that even if the entire allegations taken from the complaint as it is, would at the most show that there is breach of condition of agreement. From para 9 of memo of Criminal Case, it is clear that it is this respondent, who has accepted that he has received Rs.13 lakhs and has clearly told the complainant to bring the remaining amount, so as to enable the parties to execute the sale-deed. He submits that thus from this admission it is clear that it is only civil dispute and just to avoid payment of remaining amount, the criminal complaint is filed. Now, even civil suit is filed by respondent No.1 against the complainant, which is pending before the Civil Court. He submits that if the petitioner's intention was clear, he could have filed a suit for specific performance. However, instead of filing a suit, he only wants to put pressure on respondent No.1 to avoid payment of remaining amount of consideration. He submits that both the Courts below have rightly concluded that it is purely a civil dispute and no criminal case is made out and passed order of dismissal of the complaint.

07. The learned APP also supports the orders passed by the Courts below.

08. Heard both the parties. On reading of the complaint it is clear that it is not a case that the respondent has denied to execute sale-deed. On the contrary, from the allegation it is also clear that he asked to pay remaining consideration from the petitioner and has shown readiness to execute the sale-deed. Under such circumstances, it cannot be said that a case of cheating is made out. If at all there is dispute about exact amount paid and received, that can certainly be proved even in civil dispute. It cannot be believed that a person would give an amount of Rs.1 Crore 28 lakhs without obtaining any receipt or without any proof. Thus, the complaint is lacking the material particulars to make out a case of cheating. It is rightly observed by the Courts below that to make out a case of cheating, it is necessary to show that there was dishonest intention since inception. In this case the alleged agreement was executed on 04.10.2014. However, the complaint is filed on 15.10.2016 i.e. after two years. That itself shows that the respondent was ready to execute sale deed or at least there was nothing to suspect the intention of respondent No.1. On this count also it is clear that no offence is made out.

09. In view of above, the criminal writ petition stands dismissed.

[KISHORE C. SANT, J.]