2023:BHC-AUG:27234-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 CRIMINAL WRIT PETITION NO. 1270 OF 2021

Parag S/o Diwakar Pathak
..PETITIONER

-VERSUS-

1. The State of Maharashtra

2. Mr.Ramdas Dattatray Bansode
..RESPONDENTS

...

Advocate for Petitioner : Mr. Panale Sachin S.
APP for Respondent/State : Mr.A.R. Kale
Advocate for Respondent No.2 : Mr.M.P. Kale h/f Mr. Muley Atul R.

CORAM : R.G. AVACHAT AND SANJAY A. DESHMUKH, JJ.
DATED : 20th DECEMBER, 2023.

PER COURT :-

. Heard.

2. This is application for quashing of First Information Report (FIR) being Crime No.012 of 2021 registered with Aashti Police Station, Dist. Beed, for the offence punishable under section 420 r/w 34 of the Indian Penal Code and consequential charge-sheet being Regular Criminal Case (RCC) No.242 of 2022, pending before the Judicial Magistrate, First Class at Ashti, Dist. Beed.

3. The FIR has been lodged on 19th January, 2021 alleging that the applicant herein, his wife and her mother to have duped the

informant by receiving a sum of Rs.22,45,000/- and not executing a registered sale deed pursuant to the *Isar Pavati /* agreement for sale dated 12th December, 2015. It has been specifically averred in the FIR that the informant time and again made payment to the applicant herein of some of balance consideration amount and repeatedly called upon to execute the sale deed. The applicant, his wife and his mother-in-law refused to pay back the amount and asked him to do anything he could do against them. It has been specifically averred that the informant paid some amount from the bank accounts of his friends. It has also been averred that he has been duped by the applicant and other two co-accused. False agreement for sale was executed.

4. Based on such allegations, the FIR was registered and investigated as well. Charge-sheet has been filed.

5. The learned advocate for the applicant would submit that in fact the civil dispute is tried to be converted into criminal offence. Relations between the applicant and his wife have became strained and both of them have been separated. Decree of dissolution of marriage has been passed. Even the applicant and his relations have been prosecuted for the offence punishable under section 498-A of the Indian Penal Code. The wife (co-accused) has also filed application under the Domestic Violence Act. According to him, the applicant has repaid the informant sum of little Rs.3,00,000/- in

October, 2020. According to him, civil transaction sought to be converted into criminal offence is not sustainable. He relies upon recent judgment of the Hon’ble Apex Court in the case of ***Sarabjit Kaur Vs. State of Punjab and another*** reported in ***(2023) 2 SCC (Cri.) 485.*** According to him, the informant is professor, it is just difficult to assume that he would make payment without obtaining receipt therefor. The applicant could not perform his part of contract since he got snapped from his wife due to decree of dissolution of marriage. Later on, his wife revoked power of attorney executed in his favour. He meant to say that applicant was willing to perform his part of agreement, but he was unable to do so in view of revocation of power of attorney. The learned advocate ultimately urged for allowing the application.

6. The learned advocate for the informant and learned APP would on the other hand urge that criminal action would emanate from the transaction of civil nature. Intention of parties has to be gathered. There are specific averments in the FIR that by executing the *Ishar Pavati* / agreement for sale, the informant has been duped. Informant has paid not less than amount of Rs.22,45,000/- from time to time. Even timeline framed in the agreement to execute the sale deed on or before February, 2016 got extended impliedly since the applicant herein went to receive the amount upto year 2018. Our attention has been adverted to statements of two witnesses wherein

they stated that the amount was paid in their presence on more than one occasion. The learned advocate for respondent no.2 and learned APP ultimately urged for rejection of the application. According to them, contentions of the applicant are in the nature of his defences to be made out in the trial of the case.

7. Considered the submissions advanced. Perused the FIR and related papers. Land originally belonged to the wife of the applicant and her mother. Initially, there was all well between three. Both, the wife and her mother executed the general power of attorney in favour of the applicant authorizing him to deal with their agricultural land. Pursuant to the GPA, he entered into a transaction in the nature of *Ishar Pavati*/agreement for sale with the informant herein. Land bearing survey nos.145 and 148 were agreed to be sold to the informant for consideration of Rs.38,00,000/-. A sum of Rs.5,00,000/- was received as earnest money. It was agreement executed on 11th December, 2015. The transaction was to be completed on or before 5th February, 2016. There is record to indicate the informant to have paid from bank accounts of his friends certain money to the bank account of the applicant. It has been specifically averred in the FIR that the said payment is towards part of remaining consideration amount. It has also been averred in the FIR that the informant had time and again approached to the applicant, his wife and mother-in-law to ask for execution of sale deed. All of them refused and even

abused him. It has also specifically been averred in the FIR that execution of agreement for sale/*Isar Pavati* is nothing but a fraud on the informant.

8. We have perused the judgment in the case of ***Sarabjit Kaur (supra).*** The facts thereof indicate that informant therein had earlier issued notice calling upon the applicant to perform part of agreement. It is only thereafter the FIR came to be registered by introducing some additional facts, which were not there. Meaning thereby, in the first notice issued by the informant therein there was no reference of having been duped or criminality involved in the transaction. Based on those facts, the FIR therein came to be quashed.

9. The case of the applicant that relations with his wife became strained, decree of dissolution of marriage is passed, his wife to have preferred other proceedings in the nature of FIR for the offence punishable under section 498-A of the Indian Penal Code and application under section 12 of the Domestic Violence Act, are in the nature of his defences. We cannot go into the veracity of such allegations. Record indicates, the applicant to have received amount not less than Rs.8,00,000/- by RTGS. There is nothing to indicate that he repaid the entire amount except the amount of Rs.3,00,000/-. It is specific case of the informant that over Rs.22,00,000/- have been paid but the applicant and others have refused to pay back the

amount and execute the sale deed. Co-accused have sold the land to others. It is reiterated that in the FIR itself it has been averred that inspite of receiving an amount of Rs. 5,00,000/-, a false document was executed by the applicant joining hands with his wife and mother-in-law. The veracity of the allegations, whether the averments in the FIR are true or false can only be tested during the trial of the case. As such, there is material to proceed against the applicant for the crime he is alleged to have committed. We are therefore not inclined to grant the application. The application stands rejected.

(SANJAY A. DESHMUKH, J.) **(R.G. AVACHAT, J.)**

sga/