IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1228 OF 2020

Prakash Sayaji Gangurde ..PETITIONER

VERSUS

Bhaurao Karbhari Pachorkar and Another ..RESPONDENTS

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Mr. B.A. Lawate, Advocate for petitioner
Mr. N.V. Gaware a/w Mr. Narayan Rokade, Advocates for respondent no.1
Mr. M.G. Patil, A.P.P. for respondent no.2 - State

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CORAM : R.G. AVACHAT, J.
RESERVED ON : 24th FEBRUARY, 2023
PRONOUNCED ON : 20th MARCH, 2023

JUDGMENT :

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

2. The challenge in this writ petition, under Article 227 of the Constitution of India, is to the order dated 23rd December, 2019 passed by the Court of Additional Sessions Judge, Niphad allowing Criminal Revision Application No. 83 of 2019. Vide the judgment and order impugned herein, the order of "Issue of Process" passed by the Court of Judicial Magistrate First Class, Chandwad in Summary Criminal Case No. 493 of 2019, came to be set aside. It was a case instituted otherwise on police report (complaint) for the offence punishable under Section 138 of the Negotiable Instruments Act,

1881 (‘N.I. Act’). As such, the petitioner before this Court is the original complainant, while the Respondent No.1 (‘respondent’) is an accused therein.

3. It is the case of the petitioner/complainant that he and his relations owned an agricultural land in Gut No.1055 admeasuring 76 R. situated at Chandwad. The respondent/accused and his two brothers purchased the said land from the petitioner/complainant and his brothers on 16th March, 2018 for consideration of Rs.62 lakhs. As per the ready reckoner, the price of the land was Rs.25.50 lakhs. The respondent and his brothers, only with a view to save expenditure relating to stamp duty, registration fee, if any, etc., got the sale-deed executed mentioning the amount of consideration as Rs.25.50 lakhs. A sum of Rs.24.50 lakhs was paid in cash. As such, a sum of Rs.50 lakhs out of consideration of Rs.62 lakhs was paid to the petitioner/complainant and his relations. A sum of Rs.12 lakhs was outstanding. It was due from the respondent/accused. He therefore, executed a document titled ‘*Bharna Pavati*’ in favour of the petitioner/complainant. The respondent/accused also issued a cheque dated 28th June, 2019 of Rs.12 lakhs towards payment of balance consideration amount.

4. The petitioner/complainant presented the cheque for encashment on 02nd July, 2019, which returned unpaid on 03rd July, 2019 for the reason ‘funds insufficient’. The petitioner/complainant, therefore, issued a statutory

demand notice on 18th July, 2019. The respondent/accused replied the notice with false contention. The petitioner/complainant, therefore, lodged the complaint wherein process came to be issued.

5. The respondent/accused challenged the order of issuance of process by preferring the revision application. Learned Additional Sessions Judge, Niphad allowed the revision application with the following reasons :-

> *"13. ...*
>
> *In the present case also, the parties have agreed for payment of the money, which was concealed from the Govt., to avoid stamp duty. Such an agreement is against the Govt. policy and that cannot be said to be a legal agreement or legal liability.*
>
> *14. Sec. 10 of the Indian Contract Act, 1872, provides that, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.*
>
> *In the present case also, there is free consent of the parties to contract but, it is not for lawful consideration with lawful object. The object hidden behind the contract is to avoid the payment of stamp duty to the Govt. and, therefore, it was also registered with the Notary and not in the Sub Registrar's office. So, even though the agreement was registered before the Notary, but it is not valid agreement and, therefore, notarization of the document will not make the contract legal and valid. The promise made by such contract is also not legal. The consideration agreed between the parties is also not lawful consideration and the object*

is, apparently, to avoid the stamp duty of the Govt. In case of breach of the promise the contract cannot be said to be a legal consideration and the liability cannot be said to be legally recoverable liability.

18. In the present case, the consideration shown in the agreement between the parties is not lawful consideration and it is not for the lawful object and, therefore, the contract itself is void and cheque issued under such contract cannot be said to be issued for legally recoverable debt or other liability. The trial court has not considered this aspect, in proper perspective, and came to wrong conclusion. Therefore, the order passed by the trial Court is not correct or legal one."

6. Learned counsel for the petitioner/complainant would submit that the respondent/accused admittedly issued the cheque in petitioner's favour. There is statutory presumption under Section 139 of N.I. Act that the holder of a cheque received cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. He would further submit that as per the terms of the contract of sale, entire expenditure for execution of sale-deed was to be borne by the purchaser including the respondent/accused. As such, if any wrong has been committed, the responsibility thereof would squarely rests on the purchasers. The respondent/accused cannot be permitted to take benefit of his own wrong. There was no question of the agreement of sale or any subsequent agreement to be void. He would further submit that in the reply given to the statutory

demand notice, the respondent/accused claimed that the entire consideration of Rs.62 lakhs has been paid time to time. It is the case of the respondent/accused that the petitioner/complainant took disadvantage of the blank cheque in his possession. According to learned counsel, the revisional Court allowed the revision application for unsustainable reasons. He, therefore, urged for setting aside the impugned order.

7. Learned counsel for the respondent/accused would, on the other hand, submit that case made out in the complaint itself suggests that the sale-deed was undervalued. The same was done only with a view to avoid payment of stamp duty and incidental charges payable to the government. If such act is detected, penal consequences follow under the provisions of Bombay Stamp Act and Indian Registration Act as well. According to learned counsel, as such, what was agreed between the parties was illegal and against the public policy. The amount under the cheque would, therefore, not be termed to be a legally recoverable debt. The petitioner/complainant may have his remedy in civil suit. Learned counsel reiterated the reasons given by the revisional Court for setting aside the order of issuance of process. He relied on the following authorities to ultimately urge for dismissal of the writ petition -

(i) ***Immani Appa Rao and Others Vs. Gollapalli Ramalingamurthi and Others, AIR 1962 SC 370***

(ii) ***Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others, (1977) 2 SCC 424***

(iii) ***Virender Singh Vs. Laxmi Narain and Another, 2006 SCC OnLine Del 1328***

(iv) ***Narayanamma and Another Vs. Govindappa and Others, (2019) 19 SCC 42***

(v) ***Lalankumar Singh and Ors. Vs. State of Maharashtra, 2022 SCC OnLine SC 1383***

(vi) ***Nagaraj alias Nagappa Karennavar Vs. Basalingayya Hiremath, High Court of Karnataka, Dharwad Bench, in Crl.P. No. 101776 of 2021 dt. 16th February, 2022.***

8. Considered the submissions advanced. Perused the complaint and the documents relied on.

9. This Court has carefully perused the authorities relied on by learned counsel for the respondent/accused. All are distinguishable on facts. In case of Immani Appa Rao (supra), it has been observed that when both the parties to an agreement are in *pari delicto*, the Court will not grant relief. No Court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. In view of this Court, here in the case in hand, illegality committed by the respondent – accused. While in case of Mannalal Khetan (supra), it has been observed where a contract, express or implied, is expressly or by implication forbidden by statute, no Court will lend its assistance to give it effect. While in case of Virender Singh (supra) it was the case of illegal gratification paid to secure a job. A cheque was issued towards

return of the illegal gratification. In Narayanamma's (supra) case, agreement of sale was found to have been executed in breach of Section 61 of the Reforms Act, and suit was, therefore, dismissed. Lalankumar Singh's (supra) case is relied upon to submit the trial Court to have not applied it's mind while issuance of process. In the said case there was no formal order of issuance of process. So is not the case here in hand. The trial Court, after having gone through the complaint and verification statement, issued the process.

10. If the case of the respondent/accused is accepted that it was an agreement in the breach of some statutory provisions and therefore, being void, the sale transaction may fail and the respondent/accused may be required to restore possession of the land back to the petitioner/complainant. By no stretch of imagination, the sale-deed executed between the petitioner/complainant and others on one hand and the respondent/accused and others on other hand could be termed to be void on account of having been undervalued with a view to evade payment of stamp duty on the actual sale price of Rs.62 lacs.

Section 80-A of the Registration Act, 1908 reads thus :-

"80-A. Recovery of fees and provision for refund. -

(1) If on inspection or otherwise, it is found that any fee payable under this Act has not been paid or has been paid insufficiently, such fee may (after failure to pay the same on

demand within the period specified therein), on a certificate of the Inspector-General of Registration, be recovered as an arrear of land revenue from the person from whom such demand is made. The certificate of the Inspector-General shall be final and shall not be called in question in any Court or before any authority :

Provided that no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard.

(2) Where the Inspector-General of Registration finds the amount of fee in excess of that which is legally chargeable has been charged and paid under the provisions of this Act, he may, upon an application in writing or otherwise, refund the excess."

11. Certain provisions of the Maharashtra Stamp Act ('the Act') need to be adverted to. Section 30 of the Act speaks of duties by whom payable. Section 30 reads thus :-

"Sec. 30. Duties by whom payable

In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne :-

(a) …

(b) in the case of a conveyance (including a conveyance of mortgaged property) by the grantee; in the case of a lease or agreement to lease by the lessee or intended lessee;"

As such, in view of Section 30 of the Act, it was for the respondent/accused and the co-purchasers to bear expenses of providing the proper stamp. Clause 16 of the sale-deed reads thus :-

> *"16. दस्तऐवज खर्च : सदर मिळकतीचे सदर दस्तकामी आलेला संपूर्ण खर्च जसे, मुद्रांक शुल्क, नोंदणी फी, वकील फी, लिहणावहळ झेरॉक्स वगैरे अनुषंगीक सर्व खर्च हा लिहून घेणार यांनी केलेला व सोसलेला आहे."*

12. The aforesaid clause suggests there was no contract contrary to it. It was reiterated that entire expenditure such as stamp duty, registration fee, copying, etc. was to be borne by the respondent/accused and the co-purchasers. Thus, it is the respondent/accused, who is in the dock for evading the stamp duty. He cannot be permitted to take benefit of his own wrong. Moreover, in response to a statutory demand notice, the respondent/accused gave his reply disputing the petitioner/complainant's case. It is the defence of the respondent/accused that the entire amount of sale consideration has already been paid. A blank cheque remained in the custody of the petitioner/complainant. Taking advantage thereof, a false case has been lodged.

13. It is reiterated that it was the respondent/accused, who, only with a view to avoid payment of necessary stamp duty, undervalued the sale-deed. The respondent/accused cannot escape his liability, if any, to pay the amount covered by the cheque. The revisional Court committed error in setting aside the order of issuance of process. Therefore, the order passed by the revisional Court needs to be set aside.

14. In the result, writ petition succeeds in terms of prayer clause (b). The trial Court is requested to conclude the trial within ten months from the

date of receipt of copy of this order. It may also pass necessary orders on interim application, if any, moved for direction to the respondent/accused for interim compensation. Rule made absolute accordingly.

(R.G. AVACHAT, J.)

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