

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION (ST.) NO. 3255 OF 2023

Irfan Sayeed Khan ... Petitioner
Versus
State of Maharashtra & Anr. ... Respondents

**WITH
INTERIM APPLICATION (ST.) NO. 11814 OF 2023
IN
CRIMINAL WRIT PETITION (ST.) NO. 3255 OF 2023**

Mansoor Papamiya Pinjari
(through Legal Heir of deceased
Papamiya Bapu Pinjari) ... Applicant
Versus
State of Maharashtra ... Respondent

Aniesh S. Jadhav a/w Mahadji Phalke and Rushikesh Kekane for the
Petitioner.

Mr. J. P. Yagnik, APP for the Respondent No.1-State.

Mr. Gautam Pyarelal for the Respondent No.2.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 9th AUGUST, 2023

Order (Per Nitin W. Sambre, J.) :-

. The prayer is for quashing of the FIR in Crime No. 158 of 2022,
registered on 18th September 2022, for the offence punishable under
Sections 420, 465, 467 and 471 of the Indian Penal Code, at the behest
of respondent No.2-complainant.

2. Respondent No.2 preferred R.C.C. No. 2225 of 2022 on the file of Chief Judicial Magistrate, Thane for issuance of directions under Section 156(3) of the Cr.P.C. against the present petitioner alleging that the agreement of sale dated 24th October 1991 cannot be acted upon in favour of the petitioner as petitioner has practiced fraud in the matter of said agreement. The learned Chief Judicial Magistrate vide his order dated 14th September 2022 directed the Police Station Incharge to investigate and submit a report. Consequent thereto, the aforesaid offence came to be registered.

3. The case of respondent No.2-complainant appears to be that land bearing City Survey No. 13 Tika No. 59 claimed to be occupied by him along with his family.

4. A Civil Suit No. 436 of 1989 was initiated against one Mr. Zardar Khan Gulab Khan, who was a resident of the said property as a tenant. The said suit was compromised and it is claimed that Rs.1,35,000/- was paid to said Mr. Zardar Khan Gulab Khan for handing over peaceful and vacant possession of the said room to respondent No.2-complainant. It is claimed by him that in 2010 he handover the aforesaid property for development to developer Mr. Anil Ghag and said developer was to give 750 sq. ft. of developed area to respondent No.2-complainant.

5. The petitioner thereafter initiated suit on the file of 2nd Joint Civil Judge, Junior Division, based on the aforesaid agreement of sale dated 24th October 1991. It is claimed that the name of the present respondent

No.2-complainant was shown incorrect and according to him, he never appeared in the office of the sub-Registrar to execute and register the aforesaid document. According to him, the signatures on the said agreement are forged.

6. Based on the above, the Magistrate appears to have passed the order of investigation.

7. The submissions of the learned counsel for the petitioner while questioning the legality of the maintainability of prosecution against the petitioner is that the agreement dated 24th October 1991 is a registered document. According to him, there is a presumption in favour of a registered document. Based on the aforesaid, he has filed a civil suit being Regular Civil Suit No. 690 of 2010 on the file of Civil Judge, Junior Division, Thane. According to him, the said suit was decreed vide judgment and decree dated 15th December 2014. The respondent No.2-complainant has preferred a Regular Civil Appeal under Section 96 of the Civil Procedure Code, which is informed to be pending on the file of District Judge, Thane, in which the interim relief is not in operation.

8. According to the learned counsel for the petitioner, in an attempt on the part of respondent No.2-complainant one Anil Ghag has stepped into his shoes, has approached the Apex Court and the decree came to be confirmed. According to the learned counsel for petitioner, once the civil proceedings based on the aforesaid agreement of sale have attained finality up to the Supreme Court, there is no element of the

criminal intention or motive to commit offence. He would further urge that in the written statement to the aforesaid suit preferred by the petitioner it is not the stand of respondent No.2-complainant that the agreement of sale is a forged or sham document or the signature of respondent No.2-complainant is forged on the said document. In this backdrop, relying on the judgment of Apex Court in the matter of ***State of Haryana & Ors. v/s. Bhajan Lal & Ors.***, reported in ***1992 Supp (1) SCC 335***, the prayer is of false implication in a non maintainable proceeding.

9. The counsel for respondent No.2-complainant submits that one of the witness to the aforesaid agreement of sale has already lodged complaint against the present petitioner. It is claimed that since the complaint discloses cognizable offence, the Magistrate has directed investigation and offence is rightly so registered. The learned counsel would urge that since the offence is under investigation, this Court should be slow in causing interference at this stage of the proceedings.

10. The learned APP submits that in conflict of the proceedings over the issue of validity of the agreement of sale, the finding required in the civil proceedings shall always prevail. According to him, the Investigating Officer has sought the original document from the Court and upon looking into the same, appropriate report shall be submitted as to whether the petitioner can be charge-sheeted or a closure summary can be submitted.

11. We have appreciated the aforesaid submissions.

12. The fact that the agreement of sale dated 24th October 1991 is a registered document, is not a fact in dispute. Once the aforesaid document is a registered one, there is presumption under Section 49 of the Registration Act in favour of such document of being validly executed and registered.

13. In such an eventuality, the burden is cast on the person or a party to such agreement who is disputing the validity and it is for the person who disputes the legality of such registered document to prove his claim.

14. Admittedly, the respondent No.2-complainant contested the claim for specific performance/declaration in Regular Civil Suit No. 690 of 2010. In the said suit, it is not the stand of the respondent No.2-complainant that the aforesaid registered agreement dated 24th October 1991 is a sham and bogus document or his signatures were obtained by fraud.

15. Apart from above, the fact remains that the said suit came to be decreed and the findings therein were upheld by the Apex Court vide judgment and order dated 5th August 2022 passed in Special Leave to Appeal (C) No(s). 9960 of 2022.

16. It is only after respondent No.2-complainant having realized that he has lost on all front, has taken recourse to filing of the criminal complaint.

17. Apart from above, the fact remains that the presumption as to registered document to be valid is considered by the Apex Court in the matter of ***Jamila Begum (deceased) thr. L.Rs. v/s. Shami Mohd. (deceased) thr. L.Rs. & Anr.***, reported in ***2019 (4) Mh.L.J. 500***. The Apex Court while dealing with the issue as to the presumption in favour of such registered document has recorded a finding that the burden shifts on such party who disputes the validity of such registered document. Admittedly, respondent No.2-complainant had a chance to discharge his burden of proving the fact that the registered agreement of sale is a sham and bogus document. The respondent No.2-complainant has failed to discharge such burden in the suit referred above.

18. Apart from above, what can be noticed is the order of issuance of process passed in exercise of powers under Section 156(3) by the Chief Judicial Magistrate on 14th September 2022, which led to the registration of aforesaid FIR, is a non-speaking order as same lacks reasons. The Apex Court in the matter of ***Priyanka Srivastava & Anr. & State of Uttar Pradesh & Ors.*** reported in ***(2015) 6 SCC 287*** and ***Anil Kumar v/s. M. K. Aiyappa***, reported in ***(2013) 10 SCC 705***, has already held that while exercising powers under Section 156(3) of the Cr.P.C., it is incumbent on the part of the Magistrate to record reasons satisfying the very ingredients and making out a case for directions of investigation. The fact remains that the order of the Magistrate lacks the reasons so also the application of mind.

19. Even if it is considered that first appeal at the behest of the

respondent No.2-complainant is pending adjudication on the file of the learned District Judge against the decree passed in the above referred suit and even if such appeal is allowed in favour of the respondent No.2-complainant, still the fact remains that it was never the case of respondent No.2-complainant that the agreement is a sham and bogus document or the signatures of the respondent No.2-complainant was obtained by fraud.

20. As such, what can be noticed is in view of the verdict of the Civil Court, the stand taken by respondent No.2-complainant before the Civil Court as regards the registered document i.e. agreement of sale we are of the view that the satisfaction of the necessary ingredients for an offence registered against the petitioner punishable under Sections 420, 465, 467, 471 cannot be inferred.

21. The aforesaid proceedings are initiated by respondent No.2-complainant with a malicious intention so as to keep the petitioner busy in the proceedings so as to deny him fruit of the decree which is passed in favour of the petitioner.

22. In this view of the matter, we are of the view that the case of the petitioner is squarely covered by the judgment of the Apex Court in the matter of ***State of Haryana & Ors. v/s. Bajanlal Lal*** (supra).

23. That being so, the present petition stands allowed in terms of prayer clause (a).

24. Considering the conduct of respondent No.2-complainant as noted herein above, we deem it appropriate to saddle cost of Rs.25,000/- to be paid by respondent No.2-complainant to the Mumbai Police Welfare Fund.

25. For reporting compliance as to payment of cost, place the matter for consideration on 29th September 2023.

26. In view of disposal of the petition, nothing survives in the interim application and the same stands disposed of.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]

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