

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

Criminal Writ Petition No. 3064 of 2018

Mohini Rajendrabapu Kumkar,
Age:48 years, Occ: Housewife,
R/o. Survey No.34/2, Near Saibaba
Temple, Kharadi Road, Chandannagar,
Tal.Haveli, Dist: Pune-411014.

... Petitioner.
(Orig.Complainant)

Versus

1. Manisha Vijay Nahar,
Age:45 years, Occ: Household & Agriculturist,
R/o. 10/11, Sukhsagar Nagar, Katraj,
Tal. Haveli, Dist:Pune-411046.

2. The State of Maharashtra
(Notice to be served on the A.P.P.,
High Court, Mumbai)

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...Respondents.
(No.1 is Orig.
Accused No.6)

Mr Ravindra S. Pachundkar for the Petitioner.
Ms Priyanka H. Chavan for respondent No.1.

Coram : R. N.Laddha,J.

Date : 29 November 2023.

P.C.:

The petitioner filed this petition to challenge the legality, validity and propriety of the order passed on 29.3.2018 by the learned Additional Sessions Judge, Pune, in Criminal Revision

Application No.754 of 2013, dismissing the petitioner's complaint against respondent No.1 for the offence punishable under Section 420 of the Indian Penal Code (IPC). This order set aside the order dated 30.1.2013 passed by the learned Judicial Magistrate, First Class, Pune, in RCC No.0404606 of 2007, whereby the process was issued against the accused, including respondent No.1 (accused No.6) for the offence punishable under Sections 420 read with 34 IPC.

2. The complainant/petitioner filed a criminal complaint alleging that accused No.1 to 4 executed a notarised agreement of disputed land in her favour and accepted Rs.2,05,000/- as consideration. It is alleged that accused No.1 to 5, in connivance with accused No.6/respondent No.1, however, executed the sale deed of the said land in favour of accused No.6. Learned Magistrate, on receipt of the complaint, recorded verification of the complainant and called investigation report under Section 202 of the Code of Criminal Procedure and thereafter issued process against all the accused under Section 420 read with 34 IPC. Respondent No. 1 then filed a revision application before the Additional Sessions Judge, who, after hearing both the parties, allowed the revision application and dismissed the complaint. Being aggrieved and dissatisfied with the order of the learned Additional Sessions Judge, the petitioner preferred this petition.

3. Mr Ravindra Pachundkar, the learned Counsel for the petitioner, submitted that as the accused No.1 to 5, after executing an agreement dated 21.3.2006, were avoiding executing the sale deed, the petitioner sent a notice to them by registered AD on 9.7.2007 and requested to execute the sale deed in her favour. However, on 7.2.2007, accused No.1 to 5, in connivance with accused No.6, intentionally executed the sale deed in favour of accused No.6/respondent No.1. It is alleged that despite of having knowledge of the aforesaid notarised agreement, respondent No.1 got executed the registered sale deed in her favour.

4. Learned Counsel submitted that the complaint and verification statement of the complainant provide sufficient evidence to establish a *prima facie* case for the offence under Section 420 IPC. Therefore, he contended that interference with the impugned order is necessary. He further submitted that the complainant/petitioner has categorically stated how deception has been played upon her by respondent No.1. He also argued that the mere existence of a remedy provided for breach of contract does not necessarily mean that civil remedy is the only remedy available to the petitioner.

5. According to Priyanka Chavan, the learned Counsel representing respondent No.1, the dispute can only be resolved by a civil court of competent jurisdiction based on evidence and

documents. She has also argued that initiating criminal proceedings in this case would be an abuse of the process of the law. Furthermore, even if all the allegations made in the complaint are taken to be true, the case for prosecution under Section 420 IPC is not made out against respondent No.1.

6. This Court has carefully considered the submissions made at the Bar and perused the material on record.

7. To establish the existence of factual ingredients that constitute the offence under Section 420 IPC, it is necessary to demonstrate that the accused had fraudulent or dishonest intentions while making the promise. In the present case, the records indicate that respondent No.1 purchased the land from accused No.1 to 5, and the dispute arose from this transaction. The complainant has not produced any document to demonstrate that respondent No.1 purchased the property despite being aware of the agreement between the complainant and accused No.1 to 5. The allegations in the complaint suggest that the dispute is of a civil nature and can be resolved through civil law. Even if all the allegations in the complaint are accepted as true, there is no evidence to support the prosecution under Section 420 IPC against respondent No.1. There is nothing on record to suggest that respondent No.1 had any *malafide* intention against the petitioner.

8. The dispute is purely of a civil nature, particularly against the present respondent No.1. Admittedly, the alleged consideration amount was not accepted by respondent No.6 from the complainant/petitioner. Furthermore, the record indicates that the complainant has already filed a Special Civil Suit bearing No.2292 of 2007 against all the accused, including respondent No.1.

9. In *Indian Oil Corporation Vs. NEPC India Ltd.*¹, the Hon'ble Supreme Court raised concern about the growing tendency in the business circles to convert purely civil disputes into criminal proceedings in the following words :

*“13. While on this issue, it is necessary to take notice of a growing tendency in business circle to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break-down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of eminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In **G. Sagar Suri Vs. State of U.P.**[(2000) 2 SCC 636:2000 SCC (Cri) 513 this Court observed:(SCC p 643, para 8)]. It is to be seen if a matter, which is essentially of a civil nature has been given a cloak of criminal offence, criminal proceedings are not a shortcut of other remedies available in law. Before issuing process a*

1 (2006)6 SCC 736

criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has led certain principles on the basis of which the High Court is to exercise its jurisdiction u/s 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

10. In the circumstances, the learned Additional Sessions Judge has rightly dismissed the complaint by setting aside the order of issuance of process against respondent No.1.

11. As a result, the petition stands dismissed.

[R. N. Laddha, J.]