

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

WRIT PETITION NO.4009 OF 2014

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Mrs. Julie Jayesh Jhaveri & Ors.

..Petitioners

Versus

The State of Maharashtra & Ors.

..Respondents

Mr. Mahesh Vaswani a/w Dharini Nagda, Shreya Tiwari, Sheetal Patkar, Pushpam Mishra i/by Anuradha Shashikant Shinde, for the Petitioners.

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

Mr. Lokesh Zade, for the Respondent No.2.

**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATE : 5th JUNE, 2023

PC.

1. Heard.

2. The petitioners are seeking quashing of the FIR being C. R. No.795 of 2013 and charge-sheet for the offences punishable under Section 406, 420, 504, 506, 34 of IPC.

3. The allegations against the petitioners are that with the respondent No.2, the flat purchaser, an oral agreement was entered into, after having accepted an amount of Rs.1,10,51,000/-, however, neither sale-deed was executed nor the amount refunded which has led to the filing of the complaint and accordingly petitioners came to be charge-sheeted.

4. The fact remains that based on the aforesaid promise made by the petitioners, the respondent No.2 was constrained to initiate proceedings before the original side of the Bombay High Court vide Suit No.436 of 2014. The said suit came to be decreed by drawing consent decree on 6th January, 2022.

5. As there is consent decree and the nature of contract is having colour of civil litigation, counsel for the petitioners would urge that the prosecution initiated against the petitioners are entitled to be quashed as the respondent No.2 has remedy of recovering the amount which are due and receivable by him under the consent decree. According to him, inability of the petitioners to pay the amount as was agreed to under the consent decree cannot be inferred to satisfy the ingredients of the offence of criminal breach of trust, cheating etc. His further contentions are that it is for the respondent No.2 to initiate execution proceedings against the aforesaid consent decree and as such, the element of absence of *mens rea* can be inferred from the very conduct of the parties. Drawing support from the catena of judgments viz. (i) *Vesa Holdings Pvt. & Anr. Vs. State of Kerala & Ors.* (2015) 8 SCC 293, (ii) *Satishchandra Ratanlal Shah Vs. State of Gujarat & Anr.* (2019) 9 SCC 148, (iii) *Thirumalai Prabhu R. & Anr. Vs. State of Maharashtra* (2021 SCC OnLine Bom. 874), (iv) *Jaswant Singh Vs. State of Punjab & Anr.* (2021 SCC OnLine SC 1007), (v) *Vijay Kumar Ghai & Ors. Vs. State of West Bengal & Ors.* (Cri. Appeal No.463 of 2023), (vi) *M. N. G. Bharateesh Reddy Vs. Ramesh*

Ranganathan & Anr. (2022 SCC OnLine SC 1061), (vii) Sarabjit Kaur Vs. State of Punjab & Anr. (2023) 3 SC 210), (viii) Rajiv Thapar & Ors. Vs. Madan Lal Kapoor (2013) 3 SCC 330 and Varinder Singh Vs. State of Punjab & Anr. (2023) SCC OnLine SC 210 contentions are, merely because the petitioners are unable to execute their part of contract or they fail to hand over the possession of the property in question or to refund the earnest money as was accepted, the prosecution against the petitioners is not maintainable.

6. While countering the aforesaid submissions, counsel for the respondent submits that the amount having been accepted by the petitioners way back in 2012, sufficiently establishes the fact that the petitioners have no intention to honour the agreement and the amount was accepted purely with criminal intention of commission of offence of not only criminal breach of trust but also cheating. According to counsel for the respondent, investigation carried out till this date as reflected in the charge-sheet sufficiently establishes the involvement of all the accused persons in the offence in question thereby satisfying the ingredients of criminal breach of trust and cheating and as such dismissal is sought.

7. We have appreciated the aforesaid submissions.

8. The fact remains that the agreement of sale of the flat in question by the petitioners to the respondent No.2 for a valid consideration and acceptance of the earnest money is not in dispute.

The said proposition is drawn from the consent decree drawn in the Suit No.436 of 2014 decided on 3rd July, 2019 and the final consent decree drawn on 6th January, 2022.

9. The fact remains that the petitioners have neither executed the sale-deed of the flat in question in favour of the respondent No.2 nor refunded the earnest amount as was accepted in spite of there being consent decree way back in 2022.

10. The aforesaid factual matrix and the conduct on the part of the petitioners can rightly found to be a basis for inferring the satisfaction of necessary ingredients of the offence punishable under Section 406 viz. Criminal breach of trust and 420 viz. Cheating. No doubt, it is always open for the Court to quash proceedings in exercise of inherent powers as provided under Section 482 of the CrPC. However, while exercising such powers, the Court is required to be conscious of the fact that the criminal proceeding initiated by the parties are not by way of misusing the remedy. In the present case, such does not appear to be the case. The petitioners having already received the amount way back in 2012 neither refunded the same nor handed over property to the respondent No.2. Even the amount under the consent decree is not paid till this date. As such, it cannot be said that the petitioners' financial inability has prompted the respondent No.2 to lodge complaint and in absence of there being necessary ingredients, offence came to be registered and charge-sheeted.

11. We are of the view that the very conduct of the petitioners as reflected in the investigating papers of not honouring the consent decree sufficiently prompts this Court for dismissal of the writ petition with cost of Rs.25,000/-.

12. The petition as such stands dismissed with cost of Rs.25,000/-.

13. It is further directed that the prosecution pending against the petitioners be expedited, as same is pending for last more than ten years.

[SHARMILA U. DESHMUKH, J.]

[NITIN W. SAMBRE, J.]