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

**CRIMINAL WRIT PETITION NO. 3698 OF 2016**

Keshav Harishchandra Bhoir )
Age: 66 Years, Occ:-Retired )
R/at Pallavi Apartment )
"B" Wing, 3rd Floor, Balkum Naka, Thane ) .. Petitioner

Verses

1. State of Maharashtra )
Mumbai (Served through Govt. Pleader) )

2. Police Incharge )
Kapurbavdi Police Station )
Tal. Majiwade )
Dist. Thane )

3. Shri Dharmendra B. Bhoir )
Age: Adult, R/at:Bhagirath tower )
Balkum Pada No. 2, Thane ) .. Respondents

Mr. Manoj Mohite, Senior Advocate a/w. Adv. Rajesh Kachare, Adv. Amol Mhatre, Adv. Sonal Dabholkar, Adv. Sameer Mhatre i/b. Jayesh Joshi for the Petitioner
Mr. Sahil Deepak Salvi, Adv. Narendra Kalpoth, Adv. Sagar Redkar for Respondent No.3
Ms. M. H. Mhatre, APP for the State

**CORAM: NITIN W. SAMBRE &**
**R.N.LADDHA, J.**

**DATED : JULY 12, 2023**

**JUDGMENT (Per Nitin W. Sambre, J):**

1. We heard Mr. Mohite, the learned Senior Advocate and Mr. Sahil Salvi the learned Advocate for Respondent No.3 and the learned APP for the State.

2. The prayer in the present petition is for quashing of Cr.No.300 of

2016 registered for the offences punishable under Sections 465, 467, 468, 471, 406, 34 of the Indian Penal Code and consequential charge sheet submitted against the Petitioner.

3. The genesis of the offence alleged against the Petitioner rests on the following facts:

a. It is claimed that the complainant - Respondent No.3 and the Petitioner are the relatives. One Bhagirath Bendu Bhoir, father of complainant Dharmendra Bhagirath Bhoir i.e. Respondent No.3 herein was running a restaurant and FL-III license by name Sandhya Lunch Home who died on 8th June 1993.

b. It is the case of Respondent No.3 that because of serious health issues of his father the Petitioner, being a man of confidence was given the aforesaid business for management on hire.

c. The Petitioner, having regard to the advanced age of the father of Respondent No.3 and his indisposed health condition, practiced fraud and got executed a registered sale deed in relation to the aforesaid business premises by forging his signature resulting into the registration of the aforesaid offence.

d. Since in the complaint lodged by Respondent No.3 cognizable offence was disclosed, investigation was carried out and the Petitioner came to be charge-sheeted.

4. While questioning the aforesaid, the learned Senior Advocate Mr.Mohite would invite attention of this Court to the registered sale deed dated 15th January 1987 executed by the father of Respondent No.3 viz. Bhagirath in favour of the Petitioner thereby creating the absolute right in the form of evidence of title in relation to the property in question. He would further submit that the recitals in the aforesaid sale deed dated 15th January 1987 not only transfer the title of the immovable property but also of the furniture, fixtures, business etc. According to him, based on the aforesaid sale deed, the property stood mutated in the name of the Petitioner in the revenue so also the record of the local Planning Authority. He would claim that FL-III license issued under the Maharashtra Prohibition Act came to be transferred in favour of the Petitioner by the Committee headed by Respondent Collector vide its approval dated 22nd November 1991. According to Mr. Mohite, the learned Senior Advocate, having regard to the claim put-forth by the Respondent No.3 - complainant as regard the forgery of signature during investigation, the matter was referred for the opinion of Handwriting Expert. After verifying the admitted signatures of deceased Bhagirath with that of the signatures on the disputed document dated 15th January 1987 i.e. the sale deed in favour of the Petitioner, the Handwriting Expert has given an opinion that the signatures on the disputed document viz. sale deed dated 15th January 1987 are that of the deceased Bhagirath. As such, he would urge that neither the act of forgery would be inferred against the

Petitioner nor there is element of cheating or criminal breach of trust, as has been alleged.

5. Mr. Mohite, the learned Senior Advocate would also invite our attention to the fact that Respondent No.3 – complainant had filed a suit being Regular Civil Suit No.841 of 2018 wherein prayer is for the declaration that the aforesaid sale deed dated 15th January 1987 is illegal, unlawful not binding on the complainant and for cancellation and declaration that the complainants are the legal heirs of the deceased Bhagirath. A declaration is also sought that the license issued in favour of the Petitioner under the provisions of the Maharashtra Police Act be cancelled and the possession of the suit premises be handed over to the complainants. According to Mr.Mohite, the learned Senior Advocate, in the aforesaid suit an objection was raised by the Applicant herein who was Defendant to the said suit under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908, as the suit claim was barred by Law of Limitation. The Trial Court has allowed the claim of Respondent No.3-complainant vide order dated 13th August 2019. The aforesaid order was the subject matter of challenge before the learned District Judge, Thane in Regular Civil Appeal No.55 of 2020. The said appeal also came to be dismissed on 22nd November 2021. According to the learned Senior Advocate, the aforesaid orders passed in the civil proceedings are not questioned by Respondent No.3 and as such said orders have attained finality. In this backdrop, the contentions are,

the prosecution of the Petitioner for the offences as alleged hereinabove viz. criminal breach of trust, cheating and the forgery cannot be inferred on the basis of the evidence available on record as Respondent No.3 – complainant in view of the above conduct has admitted that the dispute was civil in nature.

6. While countering the aforesaid submissions, the learned APP assisted by the learned Counsel for Respondent No.3 - complainant would urge that even if the orders passed in the civil proceedings have attained finality against Respondent No.3 - complainant, still the fact remains that the remedy of initiating criminal proceedings is very much available and maintainable.

7. According to the learned Counsel for the complainant, because of financial hardship, Respondent No.3 has not questioned the adverse orders passed in the civil proceedings. He would further urge that the signatures of the witnesses on the sale deed dated 15th January 1981 are in dispute and the witnesses to that effect have already given statements under Section 161 of the Code of Criminal Procedure. As regards the opinion of the Handwriting Expert is concerned, it is claimed by him that the same is subject to evidence to be led by the rival parties and it is always open for the prosecution to establish case of cheating. As such, he would urge that this Court, at this stage, should not grant indulgence, particularly, thereby granting prayer for quashing the prosecution.

8. We have appreciated the aforesaid submissions.

9. The dispute between the parties has arisen on the basis of the registered sale deed dated 15th January 1987, as it is the case of Respondent No.3 that the said document is a forged one.

10. The fact remains that there is a presumption in favour of the registered document. The Apex Court, while dealing with the said issue had an occasion to consider the presumptive value of a registered document and in the matter of ***Jamila Begum (D) through L.Rs. Vs. Shami Mohd (D) Thr. L.Rs. and Anr. 2019 (4) Mh.L.J. 500***, in paragraph No.14 has observed as under:

> *"14. Sale deed dated 21.12.1970 in favour of Jamila Begum is a registered document and the registration of the sale deed reinforces valid execution of the sale deed. A registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law."*

11. If we appreciate the aforesaid legal position, it has to be inferred that that registered sale deed dated 15/01/1987 executed by the Bhagirath, father of the Petitioner will have the presumptive value. The said sale deed has to be presumed to have validly executed. The burden shifts on the Petitioner to bring that the said sale deed was either executed by practicing fraud, coercion or misrepresentation etc. Unless the Petitioner discharges such burden in the appropriate civil proceedings and get the sale deed set aside, it will not be open for the Petitioner to claim that the sale deed dated 15/01/1987 is a forged document.

12. Apart from the above, it is to be noticed that Respondent No.3

has attempted to get the sale deed set aside in the civil proceedings which was hit by the provisions of the Limitation Act and as such the prayer of Respondent No.3 was turned down by the competent Civil Court. Once Respondent No.3 is unsuccessful in his attempt for getting the adjudication of the sale deed dated 15th January 1987 to be illegal, it cannot be said, based on mere submissions of Respondent No.3 and alleged statements recorded under Section 161 of the Code of Criminal Procedure of witness to the said sale deed that the Petitioner has indulged in an act of forgery thereby making himself liable for the criminal prosecution.

13. The fact remains that the Petitioner has failed to discharge the aforesaid burden in the Civil Proceedings though an attempt made by him. The Petitioner has failed to demonstrate that his claim in the Civil Suit was well within the limitation. Rather the Court below as rejected the Plaint preferred by the Petitioner for setting aside the sale deed being barred by Law of Limitation under Order VII Rule 11 of the Code of Civil Procedure.

14. Apart from the above, what can be noticed that in view of the complaint lodged by Respondent No.3, during investigation, the document in question viz. sale deed containing the forged signatures of Bhagirath, father of complainant - Respondent No.3 was referred for the opinion of Handwriting Expert. Along with the said reference the admitted signatures of the father of Respondent No.3 were also forwarded and the Handwriting Expert’s report has been placed on

record wherein the signatures on the registered sale deed dated 15th January 1987 were inferred to be that of the deceased-Bhagirath.

15. Apart from the above, the fact remains that the father of Respondent No.3-Bhagirath expired in the year 1993. The Petitioner, for the first time, has lodged a complaint in question in the year 2016 i.e. almost after more than 20 years. Though Respondent No.3 has tried to explain the delay caused in lodging the complaint thereby stating that the Petitioner had assured to settle the issue. Such claim of Respondent is denied by the Petitioner - Respondent in this background is unable to explain the delay of more than 20 years in preferring the criminal complaint.

16. This Court cannot be ignorant of the fact that in the interregnum the FL-III license issued under the provisions of the Maharashtra Prohibition Act was transferred in favour of the Petitioner by the order of the District Magistrate. Apart from the above, based on the aforesaid registered sale deed, the Petitioner has applied to the local Planning Authority viz. Corporation for mutation of his name against the aforesaid property. As such, it cannot be said that the fact not only about the transfer of business in favour of the Petitioner but even the property was not within the knowledge of Respondent No.3 for a period of almost 20 years.

17. In the aforesaid backdrop, it cannot be said that there was element of breach of trust on the part of the Petitioner or the Petitioner, without consent of the owner, has induced the transfer of

property in his favour and has cheated Respondent No.3.

18. There appears to be sufficient material on record to indicate that there were financial transactions between the Petitioner and the deceased - Bhagirath as a sequel of which registered sale deed was executed by the Bhagirath in favour of the Petitioner. The Complainant was staying with the deceased - Bhagirath in the same house which can be inferred from the records. The public record in relation to transfer of license issued under the provisions of Maharashtra Prohibition Act, the revenue entries which were carried out almost 15 years back sufficiently establishes that the Petitioner are in lawful possession of the property in question. As such, if we appreciate the prayer of the Petitioner for quashing of the prosecution initiated against him in exercise of powers u/s 482 of Cr.P.C. we have to be cautious of the fact that the inherent powers are saved with a purpose and object of advancement of the justice. In case the party like the Complainant in this case sought to abuse the Court process with a oblique motive of getting his properties sold by the deceased father - Bhagirath back, such attempt has to be to be throttled at its threshold.

19. The aforesaid discussion, depicts that there was a malafide attempt on the part of the Respondent/Complainant to entangle the Petitioner in a false offence. In such an eventuality, this Court cannot be said to be powerless so as to come to the rescue of the people who are conducting themselves in accordance with law.

20. In support of the aforesaid observations reliance can be placed

on the judgment of the Apex Court in the matter of ***Vineet Kumar And Others vs. State of Uttar Pradesh And Another*** reported in ***(2017) 13 SCC 369.***

21. We are also of the view that the in case if the Petitioner is made to face the prosecution on the basis of unrealistic allegations as could be noticed in FIR, the same will be giving premium to the party like the Respondent/Complainant to pursue their illegal motive of initiating false prosecution against the Petitioner and to make him suffer by facing such prosecution in the Court of law. Rather the attempt on the part of the Respondent/Complainant has to be looked as abuse of the process of law.

22. In support of the aforesaid observations, we also like to draw the support from judgment of the Apex Court in the matter of ***State of Haryana and Others vs. Ch. Bhajan Lal and Others*** reported in ***1992 AIR SCW 237*** particularly paragraph no. 108, sub-paragraph no. 7 as we are of the view that proceedings initiated against the Petitioner are manifestly attended with malafide with an ulterior motive for wreaking vengeance of the accused.

23. Apart from the above, the necessary ingredients of the forgery also cannot be inferred in view of the orders passed in the civil proceedings and the opinion of the Handwriting Expert.

24. In this backdrop, if we appreciate the contentions raised by the learned Counsel for Respondent No.3 and the learned APP, having regard to the aforesaid discussion and evidence available on record, it

cannot be said that the Petitioner should be made to face the trial merely on the basis of the statement of one of the witnesses to the alleged sale deed dated 15th January 1987. That being so, a case of grant of relief is made out.

25. The present Writ Petition, as such, stands allowed in terms of amended prayer clause (a) of the Writ Petition.

26. The Writ Petition is disposed of.

**(R.N.LADDHA,J)** **(NITIN W. SAMBRE,J)**