

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4421 OF 2014

Baban Pandharinath Kale & Anr.

... Petitioners

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Rahul Shivaji Kadam, for the Petitioners.

Mr. V. B. Konde-Deshmukh, A.P.P. for the Respondent No.1-State.

Mr. Rushikesh C. Barge, for Respondent No.2.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 4th DECEMBER, 2023.

P.C.: [PER- A. S. GADKARI J]

1) The Petitioners, accused in C.R. No. 60 of 2014, registered with Saswad Police Station, District- Pune, for the offence punishable under Section 420 of Indian Penal Code have invoked jurisdiction of this Court under Article 226 of Constitution of India for quashing of the said crime.

2) Heard Mr. Kadam, learned Advocate for the Petitioners, Mr. Konde-Deshmukh, learned APP for the Respondent No.1-State and Mr. Barge, learned Advocate for the Respondent No.2. Perused entire record.

2.1) Record indicates that, by an Order dated 18th April, 2018, Rule and interim relief was granted in the present Petition.

3) Respondent No.2 has filed present crime. It is the allegation against the Petitioners that, the Petitioner No.1 being a builder, constructed Avadhut Housing Society at Saswad, District Pune. Accordingly, Deed of

Assignment dated 20th June, 2011 was executed between the Petitioner No.1 and Respondent No.2 and Petitioners gave possession of Flat No.2 upon consideration to the Respondent No.2. The said Deed of Assignment was also registered with the Sub-Registrar of Assurances, Purandar, District-Pune. That, though the Petitioner No.1 had agreed to sell and handover possession of Flat No.1 in the said building instead delivered possession of Flat No.2 to the Respondent No.2. In this brief premise, present crime is registered under Section 420 of Indian Penal Code.

4) It is an admitted fact on record that, the Respondent No.2 had filed a Complaint bearing No. APDF/2013/40 before the District Consumer Grievance Redressal Forum, Pune with similar allegations and had sought compensation and other reliefs from it. The District Consumer Forum by its Judgment and Order dated 22nd October, 2013, was pleased to dismiss the said complaint. In paragraph No. 3 of the said Judgment, the Consumer Forum has observed that, when it examined the Respondent No.2, he admitted that he is residing in the premises which was agreed to be sold to him by the Petitioner No.1. That he has received the possession of the Suit premises. The Consumer Forum has observed that, the premises for which Agreement was executed, possession of the same has been handed over to the Respondent No.2 by the Petitioner No.1 and therefore there is no substance in the grievance of the Respondent No.2.

5) Apart from the facts mentioned above, record further indicates

that, the Deed of Assignment dated 20th June, 2011, is very specific for Flat No.2, situated on the 1st Floor of the Avadhut Housing Society, Saswad. In paragraph No. 2 of internal page No.7 of the said Deed of Assignment, the Respondent No.2 has agreed that, he has received the possession of the flat described therein. It is to be noted here that, the Order passed by the District Consumer Forum, Pune holds the field even as of today, as the same has not been challenged before the higher Forum/Court.

6) In view of the above, it is apparent that, the Petitioner No.1 has performed his part of obligation in furtherance of Deed of Assignment dated 20th June, 2011 and as noted above, the Petitioner No.1 did not handover the possession of wrong flat to the Respondent No.1. He has in fact handed over possession of Flat No.2 to the Respondent No.2, as agreed as per the Deed of Assignment.

6.1) Perusal of record indicates that, the Petitioner No.2 has no role at all in the present crime and he has been unnecessarily indicted herein to pressurize Petitioner No.1 and nothing-else.

6.2) According to us no case of cheating and dishonestly inducing delivery of property is made out by the prosecution.

7) After perusing entire record, we are of the considered view that, the lodgment of the present crime by Respondent No.2 is nothing but sheer abuse of process of law and deserves to be quashed and set aside and is accordingly quashed and set aside.

- 8) Petition is allowed in terms of prayer clause (A).
- 9) Rule is made absolute in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)