IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3903 OF 2011

1. Nandlal Mohandas Jaisingh)
   Aged 74 years, Indian Inhabitant,)
   having address at 701, Acme Regency,)
   S.V. Road, Vile Parle (West),)
   Mumbai – 400 056)

2. Kishore Nandlal Jaisingh)
   Aged 53 years, Indian Inhabitant)
   having address at ¼, Leelaram)
   Niwas, Vishindev CHS Limited,)
   Plot No. 69A, 10th Road, Khar (West),)
   Mumbai – 400 052) .. Petitioners

versus

1. Vijay Uttamchand Bhatia)
   having address at above)
   Madhukunj Jain Sweets,)
   V.L. Road, Kandivali (West),)
   Kandivali (West), Mumbai- 400 067)

2. State of Maharashtra) .. Respondents

Mr. Girish Kulkarni, Senior Advocate a/w. Mrunmai Kulkarni a/w. Mr. K.N. Pandey i/b. M.G. Shukla for the Petitioners
Ms. Anamika Malhotra, APP for Respondent No.2 -State

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

DATE : 4th NOVEMBER, 2023.

<u>JUDGMENT [Per- A.S. GADKARI, J.]</u>

1) By the present Petition filed under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, the Petitioners,

accused in C.R. No. 56/2011 registered with Kasara Police Station, District Thane (Rural) under Sections 420, 467, 468, 471, 506 r/w. 34 of the Indian Penal Code, have prayed for quashing of the said crime.

2) Heard Mr. Kulkarni, learned senior counsel for the Petitioners and Ms. Malhotra, learned APP for the Respondent No.2-State. Perused entire record.

3) Record reveals that, by an Order dated 20th June, 2012, Rule was issued and interim relief was granted in favour of the Petitioners. That, before issuing Rule, the Respondent No.1 was being represented by an Advocate, was also heard. Record further discloses that, the Rule Notice has been duly served on Respondent No.1. Despite service, none appears for Respondent No.1.

4) Mr. Kulkarni on instructions submitted that, after passing of the Order dated 20th June, 2012, the Investigating Agency has not filed charge-sheet. The said statement is accepted.

5) The F.I.R. is lodged by the Respondent No.1. The case of prosecution in brief is that, the Respondent No.1 was in search of land for his farm house. He met Petitioners through an agent in Kandivali, Mumbai. The Petitioners represented Respondent No.1 that they were having clear title of land admeasuring approximately 100 acres at Village Shirol, Taluka Shahapur, District Thane and the Petitioner No.2 deals in it. Respondent

No.1 decided to purchase two acres of land, out of the larger portion of the said land. The said two acres of land was having Survey No. 1456 at Village Shirol, Taluka Shahapur (for short 'the suit property'). The Petitioners and Respondent No.1 thereafter executed an Agreement of Understanding dated 30th November,1988 on a stamp paper of Rs.10/-. The total consideration of the sale of land was agreed to Rs.71,000/- i.e. Rs.35,500/- per acre. At the time of execution of the said Agreement, Respondent No.1 paid a sum of Rs.65,000/- by way of two cheques and it was decided that balance amount of Rs.6,000/- would be paid at the time of receipt of possession of the said plot of land. That, the Petitioners did not hand over the possession of the suit property within a reasonable time and according to Respondent No.1 delayed it deliberately. Subsequently, the Petitioners proposed a scheme on the suit property and fresh proposal was given to Respondent No.1. An Agreement for Sale was executed on 29th April, 1991 and it is alleged that, the Respondent No.1 handed over the remaining cash amount of Rs.6,000/- to the Petitioners. However, the Petitioners told him that, the possession of suit property would be handed over after the necessary formality of completion of documents. It was subsequently revealed to the Respondent No.1 that, the said plot of land was transferred by the Petitioners in favour of third party and he has been cheated by the Petitioners. Respondent No.1

therefore, addressed a complaint to the Kasara Police Station, whereupon the present crime has been registered.

6) At the outset, it is to be noted here that, the Agreement of Understanding dated 30th November, 1988 and the other document i.e. Agreement for Sale dated 29th April, 1991 wherein the Petitioners agreed to sale the property to the Respondent No.1 are unregistered documents. The Petitioners in their pleadings have made a categorical positive statement that, after they realized that the suit property is encumbered by third party, they returned the amount of Rs.65,000/- in cash to the Respondent No.1 in the year 1996 itself. The said averment is not controverted by the Respondent No.1 and therefore a safe inference can be drawn that Respondent No.1 has admitted the said fact.

7) Apart from aforestated facts it is to be noted here that, even as per the contention of the Respondent No.1, the first document i.e. Agreement of Understanding was executed on 30th November, 1988. The said document was thereafter succeeded by execution of Agreement for Sale on 29th April, 1991. As noted earlier, both the documents are unregistered documents. Therefore, a cause of action which had arisen on 29th April, 1991, the crime in question has been lodged by the Respondent No.1 on 8th November, 2011 with an inordinate delay. Perusal of the F.I.R. indicates that, the said

inordinate delay has not at all been explained least to say, satisfactorily explained by the Respondent No.1. As noted earlier, it is the specific case of the Petitioners that, they returned the said amount of Rs.65,000/-in cash to the Complainant in the year 1996. There is no denial to the said assertion. It may be the reason that, the Respondent No.1 is not contesting the present Petition. We find considerable substance in the argument of the learned senior counsel for the Petitioners that, the lodgment of present crime is the product of malafide of complaint and the charge of forgery alleged is without any basic supporting material to it.

8) In view of the aforesaid discussion, we are of the view that continuation of the prosecution against the Petitioners in furtherance of the FIR registered by Respondent No.1 would be abuse of process of law and the said FIR needs to be quashed and set aside.

9) Petition is accordingly allowed in terms of prayer clause (b).

9.1) Rule is made absolute in the aforesaid terms.

(SHYAM C. CHANDAK,J.) **(A. S. GADKARI, J.)**