



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL APPLICATION (APL) NO. 1116/2021

Akshay s/o Madhukar Rathod

..APPLICANT

v e r s u s

1) Sanjay Laxminarayan Loya
and others

..RESPONDENTS

.....
Mr I.V. Tambi, Advocate (appointed) for the applicant
Mr.V.D. Darne, Advocate for Respondent Nos. 1 to 5
.....

CORAM: ANIL L. PANSARE, J.
DATED : 22.08.2023

PC:

Heard the learned counsel for the respective parties at length.

2. The applicant is the son of Madhukar Rathod, who was an ex-serviceman. His father stood retired from Army, as an Ex-Naik GD Soldier. His father was in need of a residential plot. In the year 1997, the father of the applicant had applied for allotment of a plot for residential purpose, to the Government. His request was for allotment of plot No. 1252 in Sheet No.7 situated at Arni. According to the applicant, the said plot was reserved from the *gaathan* of the village for the purpose of residence/quarters of ex-serviceman/Government servants and their family members. It is his case that the Government, instead of allotting said plot to his father, had sold it to the respondent Nos.1 to 5. The father of the applicant, being aggrieved by such sale,

filed a suit being Special Civil Suit No.26/2010 before the learned Joint Civil Judge, Sr.Dn. Darwha, against the Collector, Sub-Divisional Officer, Tahsildar and the present respondent nos. 1 to 5. The said suit came to be dismissed. The Court held that the plot under question was not reserved exclusively for ex-service army personnel.

3. The applicant has then alleged that he is aggrieved by the by the manipulation of the record by the authorities and the respondents herein. He, therefore, lodged a police complaint on 2nd April, 2018 for offence punishable under sections 465, 468, 466, 467, 420,120B and 34 of the Indian Penal Code. This complaint was never acted upon by the police. Therefore, the applicant preferred an application on 29th May,2018 u/s. 156(3) of the Code of Criminal Procedure, 1973 (for short, “the Code”) before the learned Judicial Magistrate, First Class, Arni vide Misc. Criminal Application No. 77/2018. The learned Magistrate vide order dated 21st June 2018 was pleased to reject the prayer made u/s. 156(3) of the Code and directed to put up the case for verification of the complainant (present applicant) after re-registering the same as a private complaint. The said complaint bearing R.C.C. No.63/2018 is pending for further steps.

4. The applicant has assailed the order dated 21st June, 2018 passed by the learned Magistrate before the Sessions Court, Darwha vide Criminal Revision No.11/2018. The Sessions Court vide order dated 16th December, 2020 dismissed the Revision. Against the said order, the applicant is before this Court by means of the instant Application u/s 482 of the Code.

5. After having gone through the impugned order, it is found that the Courts below have refrained from entertaining the grievance of the applicant, on the ground that the applicant/complainant has not specified the exact role of the respondents/non-applicants in committing the crime and no specific documents or dates have been provided as regards fraud, forgery and cheating. The learned Magistrate has, therefore, directed to put up the case for verification. Thus, the complaint is not yet dismissed.

6. I have, with the assistance of the learned counsel appearing for the parties, gone through the application made by the applicant u/s. 156(3) of the Code. In Para No.1 the applicant states that he is the son of an ex-serviceman. On the point of forgery and cheating the averments are made in paragraphs 2 and 3, which read as under :-

“2. That, in connection of property card Sheet No.7, Plot No./1252 (Nagar Survey No.), admeasuring 526.1 sq.mtrs. all non-applicants have committed crime under sections 465, 468,466, 467, 471, 420, 120B of I.P Code r/w sec.34 of I.P Code, 1860.

3. That, it reveals that forgery and cheating with dishonest and fraudulent intention by the collusion, conspiracy occurred by all non-applicants.”

The applicant then states that he has filed a complaint before the Police Station, Arni, but the police officials have not taken cognizance in terms of Section 151 (1) of the Code. He has then provided the plot details. He states that the said plot is reserved for shelter for Government servants as per the order passed in the year 1966 by SDO Darwha. He then alleges that there is some conspiracy and

collusion with the public servants and the respondents herein.

7. As could be seen, the complaint does not mention particulars as regards the fraud and forgery, but a mere statement is made in this regard. The applicant further states that there is some conspiracy. Thus, the applicant is not even aware of the nature of conspiracy and, therefore, has described the conspiracy by prefixing the word 'some'. So far as reservation of plot is concerned, the first appellate Court has taken note of the judgment and decree dated 25th February 2016 passed by the learned Joint Civil Judge, S.D., Darwaha in Special Civil Suit No.26/2010. The suit was filed for declaration, permanent injunction and cancellation of auction. The suit plot was sold to the present respondents in auction. The Court noted that the learned Civil Judge has after taking into account the evidence led before it, has held that the suit plot was not reserved exclusively for ex-serviceman and, therefore, the plaintiff/father of the applicant, was not having any right to claim the suit plot. The Court further observed that there is no illegality committed by the respondents herein while purchasing the plot. The suit came to be dismissed. This order has not been challenged and thus has attained finality.

8. The first Appellate Court has then noted that the applicant has not produced before the learned Magistrate as to what were the false documents which were allegedly produced by the respondents for purchasing the said plot. The Court has noted that the plot was reserved for residence of Government servants and was allotted to the respondents by public auction. The Court noted that the applicant failed to show before the revenue authority that his father being ex-serviceman

was required to be treated as a Government servant and was entitled to purchase the plot by public auction. It is then held that the issue under question is of civil nature and can be decided by appropriate authority. The ingredients of offences are not made out and, accordingly, dismissed the Revision.

9. Thus, both the Courts below are against the applicant. The concurrent finding recorded by the Courts below is rendered after considering the material placed before it. I do not find any reason to upset the said finding, particularly when the complaint is not yet dismissed and is kept for verification. The same is, therefore, rejected.

10. Professional fee of Mr. Ishant Tambi, learned Advocate (appointed) for the applicant, be quantified as per Rules.

(ANIL L. PANSARE, J.)