



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

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**CRIMINAL APPLICATION (APL) NO. 1427/2022**

1) Smt.Vandana d/o Balwantrao Dhote and others ..Applicants  
**versus**

1) Satish s/o Balaji Bhoyar and another ..Respondents

.....  
Mr.D.R. Bhoyar, Advocate for the applicant /s  
Ms.Shamsi Haider, APP for Respondent No.2-State  
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**CORAM:** ANIL L. PANSARE, J.  
**DATED** : 14<sup>th</sup> September, 2023.

**PC:**

Heard Mr.D.R.Bhoyar, the learned counsel for the applicants,  
at length.

2. By the present Application, the applicants are seeking to  
quash and set aside the Criminal Private complaint filed by Respondent  
No.1 vide RCC No.341/2022 pending before the learned 18<sup>th</sup> Judicial  
Magistrate, First Class, Nagpur, for the offence punishable under sections  
420,405, 406, 506 and 34 of the Indian Penal Code.

3. The contention of the applicants is that the respondent no.1,  
under the garb of complaint, is trying to convert the civil dispute into a  
criminal case. The parties had entered into an agreement of sale of a flat  
belonging to the applicants. A cheque issued by the respondent no.1 has  
been dishonoured and after lapse of four years, by way of the pressure  
tactics, the respondent no.1 has filed the complaint under section 190 of  
the Code.

4. It is well settled that while quashing the FIR/complaint, the

Court will have to consider the averments made in the complaint at its face value.

5. I have gone through the complaint. It appears that the complaint has been filed on 23<sup>rd</sup> August, 2018. The complainant states that on 1<sup>st</sup> May 2018 he along with his friend visited the applicant/original accused no.1, to execute the sale deed and gave an option to the applicant no.1 that if she is not willing to execute the sale-deed the applicants may return his money back. The respondent no.1 then states that the applicant no.1 then instructed the respondent no.1 to prepare fresh Memorandum of Understanding (in short, 'MoU'). The respondent no.1/original complainant has then stated in the complaint that a notice dated 14<sup>th</sup> May, 2018 was issued to the applicants herein, calling upon the applicant no.1 to register the sale-deed. She has denied the same by reply dated 1<sup>st</sup> June, 2018. The respondent no.1/original complainant has on the same day i.e. 1<sup>st</sup> June 2018 prepared a new MoU and visited the applicant no.1. At that time, her brothers i.e. applicant nos. 2 and 3 were present. The respondent No.1 asked the applicants to sign the new MoU. At that time, the applicants picked up a quarrel and abused the respondent No.1. They refused to execute the sale-deed, so also to repay the amount paid by respondent No.1. They too warned him not to visit their house again.

6. The respondent No.1 then states that he lodged a report on 2<sup>nd</sup> July 2018 against the applicants with police Station Hudkeshwar. The police officer had called the applicants in the Police station. The applicants have admitted before the police authority that they have received Rs. 6 lakhs at the time of entering into the agreement to sell,

but refused to execute the sale deed, for the reason of increase in price of the flat. Thereafter, the applicant no.1 has published a notice disclosing her intention to sell the flat. Thus, the case of the respondent No.1 is that the applicants have dishonestly induced the respondent no.1 to pay Rs. 6 lakhs for purchasing the flat, when the applicants were not intending to sell the flat and, therefore, they have neither executed the sale-deed of the flat nor have they returned back the amount.

7. The learned counsel for the applicants has relied upon the judgment in the case of Sarabjit Kaur vs. State of Punjab: (2023) 5 SCC 360, in support of his contention that the Court ought not to convert a civil dispute into a criminal case. Para no.13 of the said judgment reads thus:

*“13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that Respondent 2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which FIR was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court.”*

8. A bare perusal of the paragraph indicates that the complainant therein has not only improved his stand but went on filing complaints and the facts were such that the complainant intended to convert the civil dispute in criminal case by putting pressure. In the present case, the applicants have dishonestly induced the respondent no. 1 to pay Rs. 6 lakhs to purchase the flat, when the applicants had no intention to sell the same. Though the transaction is four years old, the respondent no.1 has put forth a case of fresh cause of action, by stating that he made a request to the applicants, to either sell the flat or repay his amount. The applicants have done neither and, therefore, have cheated the respondent No.1. In the circumstances, if the averments made in the complaint are accepted to be true, it will be difficult to arrive at a conclusion that the respondent no.1 is making an attempt to convert the civil dispute in criminal case.

9. The learned counsel for the applicants, has placed reliance upon the judgment in the case of Mitesh Kumar J. Sha vs. State of Karnataka : 2022 CRI.L.J. 231. The allegations were that the builder company had sold four excess flats beyond its share. A plea was taken that it was specifically agreed between the builder and the complainant that the builder shall make payment to the Finance Company out of the proceeds of said sale. The builder did not. In the circumstances, the Hon'ble Supreme Court held that the dispute could only be termed as merely breach of contract and that there is no case of dishonest or fraudulent intention.

10. On the contrary, in the present case, the facts as stated

above, are such that the intention of the applicant no.1 to enter into agreement with third party appears to be to defeat the earlier agreement which she entered into with the respondent no.1, the issue of intention will only be clarified during the trial. At this stage, on the basis of judgment cited above, it will not be apt to comment upon the intention of the parties. The judgment, therefore, to my mind, will be of no assistance to the applicants.

11. The learned counsel for the applicants has then taken aid of the ruling in the case of Prof. R.K. Vijayasathy and another vs. Sudha Seetharam and another: (2019) 16 SCC 739. The appellants therein had instituted a suit for recovery of Rs. 20 lakhs from the respondents and thereafter the first respondent filed a complaint case against son of the appellants u/s 405, 415 and 420 of the IPC, alleging that he entrusted Rs.20 lakhs for his benefit and she returned it to him on his demand, and further that the appellants had colluded to siphon away the said money from her. The complaint was filed after six years of alleged transaction and after three years of filing the suit. In these peculiar facts and circumstances of the case, the criminal proceedings were quashed.

12. The facts in the present case, are altogether different. Though the agreement between the parties was four years old, the respondent no.1 through complaint has spelt out fresh cause of action in the month of May 2018. Further, no civil suit is pending between the parties relating to the aforesaid transaction. The applicants, therefore, cannot take benefit of the aforesaid judgment.

13. Lastly, the learned counsel has referred to the judgment in

the case of G.Sagar Suri & another vs. State of U.P. & others: AIR 2000 SC 754. The facts were such that the accused persons therein have had approached the complainant-Finance company for grant of loan and for the payment of loan have had issued cheques on two occasions which were dishonoured by the Bank. The finance company, therefore, initiated proceedings u/s 138 of the Negotiable Instruments Act, 1881. The Finance Company then filed a complaint against accused persons u/s 406 and 420 of the IPC, on the ground that they had committed fraudulent act with intent to cheat and grab money of the Finance company. The Hon'ble Supreme Court found that, except for making omnibus statements of dishonest intention and misrepresentation there was nothing on record to show as to what were those misrepresentation and how the complainant-company was duped.

**14.** This judgment will also be of no relevance inasmuch as it is nobody's case that the present complaint has been filed to get rid of the earlier prosecution filed against the respondent No.1. The facts are straight and simple. The respondent No.1 has filed the complaint stating therein that despite there being agreement to sell in subsistence which was to be modified in the form of MoU, the applicant no.1 is all set to enter into another transaction with an intention to defeat the agreement entered into by her with the respondent no.1. This allegation, along with other allegations made in the complaint by itself, does not indicate that the transaction is purely of civil nature. The contentions raised by the applicants cannot be considered to quash the complaint. In other words, the defence put forth cannot be taken aid of for quashing the complaint. The applicants are at liberty to put forth their defence for dismissal of complaint or for discharge or any other alternate remedy available in

law.

15. The Apex Court in the case of Niharika Infrastructures Pvt.Ltd. Vs. State of Maharashtra: (2021 SCC Online SC 315), while examining the issue of quashing complaint/ FIR, has held that the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint/FIR. The Hon'ble Supreme Court has further held that the criminal proceedings ought not to be scuttled at the initial stage and quashing of complaint/FIR should be an exception and a rarity than an ordinary rule. Nonetheless, if upon perusal of complaint and upon considering it to be reliable or genuine or in a way by accepting the allegations to be true, if no case is made out, the complaint/FIR may be quashed.

16. Considering the above findings, it will not be appropriate, at this stage, to embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The defence put forth by the applicants would definitely be indicative of the fact that there is an arguable case in favour of the applicants as to the nature of transaction between the parties which may after deliberation, turn out to be of civil nature. This aspect, however, cannot be delve upon at this stage.

17. In sum and substance, there is no merit in the Application. The same is rejected.

[ANIL L. PANSARE, J.]