2024:BHC-AUG:26661-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 CRIMINAL APPLICATION NO.803 OF 2020

Bhujang Vitthal Godbole,
Age 36 yrs., Occ. Service,
R/o Balirampur,
Tq. & Dist. Nanded.

… Applicant

… **Versus** …

1 The State of Maharashtra
Through Police Station,
Nanded (Rural), Dist. Nanded.

2 Dhamanand Nagorao Jadhav,
Age 30 yrs., Occ. Service,
R/o Rahulnagar Waghala, Nanded,
Tq. & Dist. Nanded.

… Respondents

…

Mr. S.B. Ghatol Patil, Advocate for applicant

Mr. G.A. Kulkarni, APP for respondent No.1

Mr. S.M. Kamble, Advocate for respondent No.2

…

CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 03rd OCTOBER, 2024

<u>ORDER</u> : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 initially for quashing First Information Report vide Crime No.32/2020 dated 16.01.2020 registered with Nanded Rural Police Station, Tq. & Dist. Nanded and by way of amendment proceedings in Regular Criminal Case No.299/2021 pending before learned Additional Chief Judicial Magistrate, Nanded, for the offence punishable under Section 420, 506 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. S.B. Ghatol Patil for applicant, learned APP Mr. G.A. Kulkarni for respondent No.1 and learned Advocate Mr. S.M. Kamble for respondent No.2.

3 Learned Advocate for applicant submits that perusal of First Information Report would show that the transaction is civil in nature. The informant intends to say that the applicant, who is A.S.I. and serving as Writer to Special Director General of Police, Nanded Division, in 2017 had introduced one Vitthal Yadavji Molke. Applicant and said Molke had shown a plot, which was available for sale, belonging to said Vitthal Molke. The informant purchased the same and thereby executed the sale deed, however, that plot was already sold by Power of Attorney of Vitthal Molke. The

another half of the plot was purchased by cousin brother of informant from said Vitthal Molke with the intervention of applicant and that plot was also already sold. Thereafter an agreement was executed stating that Vitthal Molke would return the amount and cheques were given to him as well as to his cousin brother, but those were not honoured. When the informant was contacting said Molke and also the applicant, so that he can get the amount; yet, threats were given to the informant, who is in fact serving as Police Constable. Perusal of the agreement executed by Vitthal Molake whereupon he had given the cheque would show that it is a civil transaction and also the fact that he has the remedy to approach Criminal Court for dishonour of the cheque. Therefore, there is no question of offence of cheating. It would be unjust to ask the applicant, who had not taken active part in the entire process, to face the trial for offence under Section 420, 506 read with Section 34 of the Indian Penal Code.

4 On this point, the applicant is relying on the decisions in **Paramjeet Batra vs. State of Uttarakhand and others** [(2013) 11 SCC 673], **Gulam Mustafa vs. State of Karnataka and another** [2023 SCC OnLine SC 603], **Mitesh Kumar J. Sha vs. State of Karnataka and others** [(2022) 14 SCC 572], **Vinod Natesan vs. State of Kerala and others** [(2019) 2 SCC 401], **Uma Shankar Gopalika vs. State of Bihar and another** [(2005) 10 SCC 336], **State**

of Haryana and others vs. Ch. Bhajan Lal and others [AIR 1992 SC 604], **Suresh Chandiram Palnitkar and others vs. Vasudev Shankar Deshpande and others** [1997(1) ALL MR 208], **M. Suresh and others vs. State of Andhra Pradesh and another** [(2018) 15 SCC 273], **Randheer Singh vs. State of Uttar Pradesh and others** [(2021) 14 SCC 626], **T. Chandramouli vs. Police Inspector, Vasco Police Station and others** [MANU/MH/3016/2016], **Kishan Singh (Dead) through LRS vs. Gurpal Singh and others** [(2010) 8 SCC 775], **State of Andhra Pradesh vs. M. Madhusudhan Rao** [(2008) 15 SCC 582] and **Sahib Singh vs. State of Haryana** [(1997) 7 SCC 231].

5 Per contra, learned Advocate for respondent No.2 vehemently submits that now the charge sheet has been produced, wherein statements of witnesses have also been recorded. Documents have been collected. No doubt, the transaction has a civil angle, but that does not mean that it will not give rise to remedy under Criminal Law. It can be seen in the peculiar circumstances of the case that the applicant had acted as mediator and had the knowledge that the plot was already sold, still he along with other accused made a representation that the said plot is available for sale. There is statement of one Sudhakar Gyanoji Hapse supporting the First Information Report. There are other documents on record. Said Vitthal Molke has then accepted that the plot was already sold and thereupon he has entered into an

agreement cancelling the same and return of the amount. It can be seen in the further action that he had no intention to return the amount. Involvement of the applicant can be seen when the informant had given complaint against the applicant on 07.03.2020 to Superintendent of Police, Nanded, whereby it was informed that since the applicant was then attached to ACB, he was giving threat to the informant that he would be involved in a false case. When there is deception since beginning, then this cannot be a fit case where inherent powers are required to be exercised.

6 We agree with the submission on behalf of respondent No.2 that every transaction having civil remedy in certain circumstances may also give rise to a criminal remedy or action under Criminal Law. Here, the deception is since beginning. The earlier transaction of sale was also registered. Still the transaction with respondent No.2 was registered. There is evidence to the effect that a role has been played by the present applicant in entering into the transaction in question which is said to have been cancelled. Thereby original accused Vitthal Molake had issued cheques in the name of respondent No.2 and his brother but those have not been honoured. The ratio laid down in all the authorities right to be relied on by the learned Advocate for applicant cannot be disputed, rather they are binding. However, we do not agree that the First Information Report in this case was not

constituting cognizable offence. Here, the said transaction has failed because the sale was by a person who was not the title holder of the immovable property. A representation was made that he is still the owner and the sale deed, that too, registered has been executed. Here, the question of delay is not directly involved because fact of cheating would get revealed only upon information to that effect. Further, delay can be explained at any stage of the proceedings. That cannot be the sole ground on which First Information Report can be quashed and set aside. In **T. Chandramouli**'s case (supra) the facts were different and thereupon it was concluded that continuation of the proceedings amounts to abuse of process of law. Here, there is no question of vague charge sheet. The First Information Report stood supported by statement of witness Sudhakar Hapse and the documentary evidence. The scope under Section 482 of the Code of Criminal Procedure is, therefore, limited here. When charge sheet shows prima facie evidence, this will not be the fit case where those inherent powers are required to be exercised. Application stands rejected.

(S.G. CHAPALGAONKAR, J.) **(SMT. VIBHA KANKANWADI, J.)**

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