



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

908. CRIMINAL WRIT PETITION NO. 1005 OF 2024

SHAILENDRA MADAN MALARA

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

....

Mr. A. P. Bhandari, Advocate h/f Mr. A. P. Nahar, Advocate for the
Petitioner

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 23.10.2024

PER COURT :-

1. Heard Mr. A. P. Bhandari, learned Advocate for the
Petitioner.

2. By the present Petition under Article 227 of the
Constitution of India read with Section 482 of the Code of
Criminal Procedure, the Petitioner/original complainant takes
exception to the order dated 10.01.2024 passed by the learned
Additional Sessions Judge, Aurangabad (Court No.6), in Criminal
Revision Application No. 191 of 2021, whereby the learned
Additional Sessions Judge, affirmed the order of dismissal of
Regular Criminal Case (R.C.C.) No.1655 of 2018 u/s 203 of the
Code of Criminal Procedure, passed on 27.02.2020, by the learned
Chief Judicial Magistrate, Aurangabad.

3. Mr. Bhandari, learned Advocate for the Petitioner canvassed in vehemence that, one Mangilal Balchand Kataria transferred plot No. 10 admeasuring 139.5 sq.mtr., in favour of Respondent No. 2 Sou. Kalpana Rameshkumar Kasliwal under the registered sale-deed dated 01.12.1994. Subsequently, the present Petitioner Shri Shailendra Madan Malara along with one Ashwin Ashok Jain, purchased plot Nos. 9 and 10 from the Respondent Nos. 2 and 3 under the registered sale-deed dated 28.04.2011. The boundaries of plot No. 9 described as under:

Towards East	-	Plot Nos. 85 and 86
Towards West	-	15 meter road
Towards South	-	Plot No.10
Towards North	-	Plot No.8

4. In sale-deed, the boundaries of plot No.10 described as under:-

Towards East	-	Plot Nos. 84 and 85
Towards West	-	15 meter road
Towards South	-	Plot No.11
Towards North	-	Plot No.9

5. The learned Advocate for the Petitioner canvassed that at the time of agreement, the Respondent Nos. 2 and 3 have shown demarcated layout plan, which attached with the registered sale dated 28.04.2011. Thereafter the petitioner obtained copy of plan from the Municipal Corporation and verified the layout plan with the plan attached with the sale deed. Thereafter, for the first time the petitioner discovered about mismatch of boundaries of both the plots with the tentative layout plan and the plan attached with the Sale-Deed dated 28.04.2011. Therefore, the Respondent Nos. 2 and 3 have played fraud and dishonestly induces the Petitioner/complainant to purchase the said plot.

6. The learned counsel for the petitioner further submits that, the Respondent Nos. 2 and 3 have sold plot Nos. 9 & 10 out of unauthorised layout plan by deceiving him and falsely represented that both the plots are having sanctioned layout. Further, description of the boundaries of both the plots described in the sale-deed dated 27.10.1993 mismatch with each other. Therefore, the Petitioner had approached the Respondent Nos. 2 and 3 for the correction of layout plan in consonance with the sale-deed, but the Respondent Nos. 2

and 3 failed to correct the map. Therefore, on 17.06.2018, the Petitioner lodged the report with Kranti Chowk Police Station, Aurangabad. However, the Police Authority failed to take the cognizance.

7. Therefore, the Petitioner filed a private complaint R.C.C. No. 1655 of 2018 and thereby prayed for taking punishment to the accused persons/ Respondent Nos. 2 and 3 for the offence punishable under Sections 417, 420, 406, 409, 471, 120-B read with Section 34 of the Indian Penal Code.

8. It further canvassed that, though the learned Magistrate called the inquiry report under Section 202 of the Code of Criminal Procedure vide order dated 26.07.2019 from the concerned Police Station. The Police Inspector of Kranti Chowk Police Station, submitted it's report on 27.02.2020, however, the learned Magistrate failed to considered said report. Therefore, impugned order is illegal and bad in law, hence, prayed to quash and set aside the same.

9. It is a matter of record that, the learned Magistrate passed an order below Exh.1 and called report under Section 202 of the

Code of Criminal Procedure from the concerned Police Station. Accordingly, the Police Inspector attached with the Kranti Chowk Police Station, submitted its report on 24.07.2019 before the learned trial Court. Thereafter, on 27.02.2020, the learned trial Court passed an order and thereby dismissed the complaint under Section 203 of the Code of Criminal Procedure.

10. The learned trial court held that, though the complainant/Petitioner alleged that at the time executing the sale-deed, the accused shown bogus and fabricated map instead of tentative approved map by the Municipal Corporation. However, the sale-deed was executed in the year 2011 and copy of 7/12 extract, copy of map attached with the sale deed. It is further observed that it is the cardinal principle that while purchasing the property, it is the duty of the purchaser to verify the documents first. Apart from the contents of the complaint, so also, the dispute between the Petitioner and Respondent Nos. 2 and 3 is of civil nature.

11. Being aggrieved by the said order, the Petitioner/complainant invoked revisional jurisdiction u/s 397 of the Code of Criminal Procedure, by filing Criminal Revision Application No. 191

of 2011 before the learned Additional Sessions Judge (Court No.6), Aurangabad. On 10.01.2024, the learned Sessions Judge passed the impugned order and dismissed the Revision. The learned Sessions Judge held that though the complainant/Petitioner alleged about preparation of false map by the Respondent Nos. 2 & 3, but the complainant nowhere mentioned in his complaint about what is the difference in tentative approved map supplied by the Municipal Corporation and the map attached with the sale-deed. The Petitioner/complainant was having opportunity to verify the map before entering into the sale-deed, but the petitioner was not vigilant.

12. It is not in dispute that, on 28.04.2011, the Petitioner and one Mr. Ashwin Ashok Jain, purchased the plot Nos. 9 and 10 from Respondent Nos. 2 and 3 under the registered sale-deed. As per the recital of the sale-deed, the boundaries of Plot Nos. 9 and 10 described herein above. Thereafter, the Petitioner obtained tentative layout plan in respect plot Nos. 9 & 10 from the concern office. Thereafter, the complainant came to know about mismatch of boundaries of both the plots with the tentative plan supplied by the Municipal Corporation and the plan attached with the sale deed.

13. Needless to say that the Police Inspector of Kranti Chowk Police Station, submitted its report under Section 202(3) of the Code of Criminal Procedure, however, the learned Magistrate did not accept the said report because, the sale-deed was executed in the year 2011 and 7/12 extract, layout map were attached with the sale-deed. Therefore, prior to execution of registered sale deed, the purchaser/petitioner could have verify the documents and sanctioned layout plan from the competent authority apart from the contents of the complaint, however, the petitioner /complainant was not vigilant and without verifying the sanctioned plan and layout plan shown to him, he executed the sale-deed. On perusal of record, it does not reveal that Respondent Nos. 2 and 3 have manufactured or tampered with any documents attached with the sale-deed subsequent to execution of the sale deed.

14. In order to constitute an offence punishable under Section 417 of the Indian Penal Code, it is necessary on the part of the complainant to make averment to *prima-facie* constitute the offence that the Respondent Nos. 2 and 3 knowingly and intentionally either by substitution or representing that he or she to any person

than the other person. In order to constitute the offence punishable under Section 420 of the Indian Penal Code, it is necessary to plead essential ingredients that the Respondent Nos. 2 and 3 by cheating or deception, induced to deliver any property or though consented to retain any property, the respondents intentionally induced the complainant to purchase Plot Nos. 9 and 10.

15. The learned counsel for the petitioner invited my attention to the illustration (c) to the Section 415 of I.P. C., which reads as under:

(c) A, by exhibiting to Z a false sample of an article, intentionally deceived Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

16. Therefore, considering the illustration in plain meaning it depicts that, the plot No. 9 & 10 are not articles. The Respondents 2 & 3 were owner of plot nos. 9 & 10 not disputed and both the plots are still in existence. Since the Respondents agreed to sell the plots and petitioner agreed to purchase the plots, therefore, registered sale deed was executed. The averments in the complaint also does not show that the Respondent Nos. 2 and 3 falsely represented about ownership

of the plot. As per the provisions of Maharashtra Land Revenue Code coupled with the provisions of the Maharashtra Regional Town Planning Act, the layout cannot be laid on any land without prior permission or sanction from the competent authority.

17. On perusal of complaint it appears that the Respondent Nos. 2 and 3 were purchase the plot Nos. 9 and 10 from one Mangilal Balchand Kataria and on the basis of that sale-deed, the Respondent Nos. 2 and 3 agreed to sell the plots in question to the Petitioner and Mr. Ashwin Ashok Jain. It is not the case of the petitioner that Respondent Nos. 2 and 3 are the owner of layout and they prepared false and fabricated map attached with the sale deed. Therefore, prior to entering into an agreement to sell or even prior to getting the sale deed registered, the Petitioner was having ample of opportunities to verify the relevant documents, map and record. Considering the location, width of the road etc., he could have agreed to purchase the plots. The main grievance of the petitioner is about mismatch of width of the road and four-corner of the plot, however, the petitioner not disputed about non-existence of plot Nos. 9 and 10 in same layout. Therefore, said dispute does not fall within the ambit

of Section 415 (c) of the Indian Penal Code, but it is purely a dispute of civil nature, which may be ventilated before the competent Court. Therefore, I do not find that the impugned order is perverse, illegal or bad in law and no substantial grounds are set out to interfere with the findings. Therefore, the Writ Petition is dismissed.

[Y. G. KHOBRAGADE, J.]

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