



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

952 CRIMINAL WRIT PETITION NO. 1535 OF 2023

Premchand Amolakchand Gundecha and others

VERSUS

Narayan Tulsibhai Parmar

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Advocate for the Petitioner : Mr. Pratik P. Kothari

Advocate for Respondent : Mr. S.Y. Mahajan

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 30th APRIL, 2024.

PER COURT :-

1. The petitioners have challenged the order passed by the learned Sessions Judge, Ahmednagar in Criminal Revision application No. 47 of 2013 dated 18.8.2023. The said revision was filed for challenging the order dated 15.2.2013 passed in R.C.C. No.121 of 2005, thereby framing of charges for the offences punishable under Sections 406, 420 r.w.34 of the Indian Penal Code, 1860 (for short "I.P.C.").

2. Brief facts of the case are as under:-

a) The respondent has filed a complaint against the petitioners alleging that accused No.1 is Chairman of Mohan Co-operative Tenant Society Limited, accused No.2 is the Secretary, accused No.3 is Vice Chairman, Applicant Nos. 4 to 7 are the directors of the said society. Plot No.14 was belonging to Mohan Co-operative Society and it was

allotted to Kantabai Mehta. She sold that plot No.14 to one Mansukhlal Gandhi. Said Mansukhlal Gandhi sold that plot to the respondent for consideration of Rs.20,000/- on 19.6.1989.

b) It is further alleged that the directors of the society have passed a resolution No.6 dated 30.6.1999 and accepted the respondent as the member of the society. The transfer charges paid by the respondent were also accepted. The respondent is using that plot No. 14. The respondent filed documentary evidence on record and on that basis the respondent was accepted as a member of the said society. It is also alleged that the petitioners in collusion with the Municipal Corporation, demolished the construction raised on the said plot and thereby committed breach of the order granting protection to the respondent. The charges are framed against the petitioners under section 406, 420 r.w. 34 of I.P.C. by the trial court i.e. learned Chief Judicial Magistrate, Ahmednagar. The order of framing of charge was challenged before the Sessions Court by filing revision application. The learned Sessions Court held that if the block was illegally constructed, the society should not have allotted it to Kantabai and she should not have transferred the same subsequently. The learned Sessions Judge held that the order passed below Exh.1 for framing of charge is speaking and well reasoned order based upon the complaint at Exh.95 as well as the documentary evidence.

c) The grounds of objection to this writ petition are that the

learned trial court has not considered the dispute which is purely of civil nature and for that reason the petitioners cannot be prosecuted. They have not committed any breach of the trust as alleged by the complainant. The petitioners are falsely implicated in the crime. There is no material to proceed against the petitioners for framing charges under Sections 420,406 r.w. 34 of I.P.C. The Regular Civil Suit No.332 of 2004 is filed by the respondent against the petitioners as well the Municipal Corporation. The suit was partly decreed with regard to the remaining part, except 200 sq. ft. area of that plot No.14.

3. Learned advocate for the petitioners submitted that it is a matter of purely civil dispute and though the Civil Suit was allowed, in Regular Civil Appeal No.118 of 2008 the said judgment and decree are set aside, by judgment and order dated 15.4.2011. He pointed out para 26 of the said judgment, which reads as under:-

“26. Thus, the suit property as described in para 1 of the plaint was never owned by the plaintiff, nor any right, title or interest in that much area of the property. Likewise, the Corporation had also never sanctioned that much area on the property.”

4. Learned advocate for the petitioners lastly prayed that the impugned judgment and orders passed by the trial court as well as the appellate court are not sustainable and therefore, prayed to quash and set aside the same.

5. Learned advocate for the petitioners placed its reliance upon the judgment of the Hon'ble Supreme Court in the case of ***R.K. Vijayasarathy and Ors. vs. Sudha Seetharam and others***, reported in (2019) 16 SCC 739, wherein it is held as under:-

“Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of process of the court.”

6. Learned advocate for the respondent strongly opposed the writ petition and submitted that there is prima facie evidence of conspiracy between the petitioners and the Municipal Corporation and in furtherance of their common intention and in collusion with the Municipal Corporation they demolished the construction raised over the disputed plot No.14. The said fact was rightly considered by both the courts and reasoned orders and judgments were passed. It is lastly prayed to dismiss the writ petition as there is no substance at all.

7. Perused the impugned order, the judgment of revisional court, the complaint and affidavit in reply filed by the respondent. It is admitted fact that the civil suit was filed and the said suit was partly decreed. The Regular Civil appeal preferred by these petitioners challenging the judgment and decree passed in the R.C.S. No. 332 of 2004 is dismissed. Thus, the civil right of the respondent over the disputed property is not proved before the trial court.

8. To establish the essential ingredients of Sections 420 and 406 r.w. 34 of I.P.C. there is absolutely no averment in the complaint as to how the petitioners cheated the respondent. Further to establish the essential ingredient of criminal breach of trust, as defined in section 406 of the I.P.C., there is absolutely no any prima facie evidence that the petitioners dishonestly cheated and misappropriated or converted that property for their own use. This aspect was not properly considered by the trial court as well as in the judgment of revisional court. The reasons given in the order of the trial court as well as the revisional court are not found legal and correct. There is no ground for proceeding against the petitioners for the charged offences. The reasons of the trial court are not legal and correct. Both the courts have erred and failed to consider the essential ingredients of section 415 of I.P.C. i.e. cheating and section 405 of I.P.C. i.e. criminal breach of the trust, which is punishable under Sections 420 and 406 r.w. 34 of the I.P.C. The impugned judgment and orders are not sustainable either on facts or on law and therefore, interference is warranted in it. The writ petition deserves to be allowed. Hence, the following order:-

O R D E R

The writ petition is allowed in terms of prayer clause "B".

(SANJAY A. DESHMUKH, J.)