



This order is corrected in view of the speaking to minutes order dated 07.05.2024.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 CRIMINAL APPLICATION NO. 3872 OF 2023

1. Priyesh S/o Mahaveerlal Jaiswal.
2. Ravindra S/o Ramesh Rao Deshmukh.
3. Ramesh Yeshwantrao Jadhav. ... Applicants

Versus

Prabhu S/o Ashok Pure. ... Respondent

...
Mr. Dayanand M. Bhalke, Advocate for Applicants.
Mrs. Pooja Vijay Langhe, Advocate for Respondent.

.....

CORAM : SANJAY A. DESHMUKH, J.
DATED : 16th APRIL, 2024.

PER COURT :-

1 This is an application under Section 482 of the Code of Criminal Procedure (for short "the Cr.P.C.") for quashing and setting aside the Regular Criminal Case No.1619 of 2020 pending in the Court of learned Judicial Magistrate First Class, Aurangabad filed by the respondent against the applicants for the offences punishable under Section 406, 420, 468, 471 r.w. 34 of the Indian Penal Code (for short "the I.P.C.") and the order of issuance of process passed by the learned J.M.F.C. Aurangabad dated 28.11.2022 against the applicants.

2 The learned advocate for applicants submitted that the

sale transaction of agricultural land took place between the respondent's mother and the applicants by the executing a sale-deed dated 27th June, 2018. It is submitted that it is civil dispute and Special Civil Suit No.183 of 2020 is filed by the respondent against these applicants for declaration and perpetual injunction in respect of the disputed land Block No. 9 total admeasuring 5 Hectares 70 Are to the extent of 24, situated at village Tisgaon, Tq. and district Aurangabad. He submitted that the entire consideration amount is paid by cheque. However, after the registration of the sale-deed, false allegations of cheating are made and in order to harass the applicants. The false criminal complaint case is filed against the applicants. The cheque is realized in her bank account. It is concocted story and allegations of cheating are made baldly. The process is issued even though it is dispute of civil nature, in order to malign the image of these applicants in the society and in order to pressurize and harass these applicants. The disputed property is in possession of these applicants. A mutation entry is also effected.

3 The learned advocate for applicants further submitted that the compromise pursis executed before the Family Court between the grandfather of the respondent, respondent and his mother by which they got the disputed property. The respondent is witness to the disputed sale-deed. Earlier to the sale-deed, the respondent has relinquished his right by executing registered relinquishment deed, dated 18th April, 2017. He has no locus-standi

to file said complainant. It is lastly prayed to quash the said criminal case against these applicants.

4 During the course of arguments, the learned advocate for applicants relied upon the case of ***Commissioner of Police and Ors. Vs. Devender Anand and Ors., AIR 2019 Supreme Court 3807***, in which it is held as under:

“4.2 The earlier opinion on preliminary inquiry was never placed before the DCP. Thereafter, on thorough investigation/inquiry and considering the facts and circumstances of the case narrated hereinabove, when it was opined that the dispute between the parties is of a civil nature, the High Court ought not to have issued further directions. The High Court ought to have closed the proceedings. Not only the High Court has issued further directions, but even has imposed costs and an action against the appellants 3 to 5 herein which, in the facts and circumstances of the case, is not sustainable.”

5 The learned advocate for respondent strongly opposed the application and submitted that these applicants have practiced fraud upon the respondent and his mother and got executed the false sale-deed without paying consideration amount to them. Applicants' fraudulent intention of grabbing that property without paying consideration, is *prima-facie* establishing from their conduct. Though the sale-deed of another property is executed in favour of the respondent's mother after the sale of disputed property, its consideration was paid out of fixed deposit made by the respondent's mother. There is no such *prima-facie* evidence to show that the

consideration amount was paid to the respondent's mother while execution of sale-deed. It is case of practicing fraud and grabbing property. It is lastly prayed to reject the application.

6 The learned advocate for respondent is relying upon the following three authorities:

I) ***Kamaladevi Agarwal Vs. State of W.B. and others, (2002) 1 Supreme Court Cases 555***, in which the Hon'ble Supreme court in para 17 has observed thus:-

"17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing for the proceedings."

II) ***Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and others, (1976) 3 Supreme Court Cases 736***, in which the Hon'ble Supreme Court has held as under:-

" The scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint, (i) on the materials placed by the complainant before the court; (ii) for the limited purpose of finding out whether a prima facie case

for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one. In proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not."

III) ***Ishwarlal s/o. Premraj Bora and others Vs. Pandir s/o. Ramji Bari and another***, decided on 18th February, 2013 by this Court in Criminal Writ Petition No. 471 of 2004, in which this court in para 5 has observed as under:-

"5. The order of issue process came to be made after recording verification of the complainant. In the verification, there are aforesaid contentions in respect of the sale deed and forged document of power of attorney. At the time of issuing of the process, only prima facie case is required to be made out and the defence of the accused need not be considered. Admittedly, there is civil dispute between the parties and the land was in possession of the complainant's family at the relevant time and for many years the Government had given permission to the family of complainant to cultivate the land. In view of these circumstances, this Court holds that there was sufficient material for issuing process against the accused."

7 The learned advocate for applicants has fairly conceded that the application against the issue process is not maintainable. It is because the revision is not preferred against it before the Sessions Court, Aurangabad.

8 During the course of arguments, a query was raised by this Court to show that how the consideration amount was paid to the respondent's mother. The main contention of the respondent is that no such consideration amount was paid.

9 The learned advocate for applicants pointed out that the consideration amount of Rs.6,53,000/- is paid by the cheque to the respondent's mother, who executed the sale-deed. There are no such allegations that consideration amount is not received by the mother of respondent. The cheque is realized in the bank account of mother of the respondent. The document at Exh. "E" to this application shows that said amount was paid to the respondent's mother who was owner of that disputed property. If such allegations were made in the complaint or any affidavit would have been filed on record to show that the consideration amount was not paid to the mother of respondent and cheque is dishonoured, then this Court would have accepted the argument of the learned advocate for respondent that the consideration amount was not paid. Therefore, though the respondent has filed account extract of three banks, it cannot be accepted that applicant Nos.1 and 2 have not paid that consideration amount.

10. Learned advocate for the respondent was directed to take instructions and submit documents of bank account as to whether the

consideration amount paid to the mother of the respondent by cheque and it was realized in her account or not. But no such document is filed. The applicants filed account extract. Perused the account extract which is taken on record and marked as "Z-1" for identification. The cheque for consideration amount dated 15.1.2019 was realized in the account of the mother of this respondent which can be seen from the bank account Exh Z-1 of M/s. Aranav Enterprises run by applicant No.1. The respondent could not show anything contrary to it. There are no allegations that after the cheque amount which was realized the applicants forcibly took that amount from respondent's mother.

11. As far as alleged execution of receipt about receiving of the consideration amount by the mother of respondent is concerned, it has been executed on 6th March, 2020, in which it is mentioned that an amount of Rs.6,53,000/- is realised by the cheque in her Axis bank account. Therefore, argument of the learned advocate for respondent that the said amount is not received, is not acceptable. Considering all these aspects and particularly the fact situation of the case, this Court finds that when consideration amount is paid and the respondent has signed the sale-deed as witness, there is no substance in his complaint.

12. Considering all these aspects and reasons it is crystal clear that false complaint case is filed against this applicants. Therefore,

the complaint is not sustainable in the eyes of law and the fact. It would be abuse of process of the Court if the applicants are compelled to face the said complaint. The complaint filed by the respondent deserves to be quashed and set aside. The application therefore, deserves to be allowed. Hence, the following order:-

O R D E R

I Criminal application is allowed in terms of prayer clause "B".

II. Criminal application is disposed of accordingly.

13. It is made clear that the observations made in this order are prima facie in nature and do not affect any other proceedings and rights of the parties.

(SANJAY A. DESHMUKH, J.)

rlj/