

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 310 OF 2016

Anita Trimbak Chavan ...Petitioner
Versus
Ramkrishna Bansi Legad Alias
Ramkrishna Tatyaba Lagad And Ors. ...Respondents

**WITH
CRIMINAL WRIT PETITION NO. 311 OF 2016**

Anita Trimbak Chavan ...Petitioner
Versus
Punja Ganpat Gavali And Ors. ...Respondents

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Mr. Sagar Kasar a/w Chaitali Bhogle i/b Mr. Amol Wagh, Advocate
for the Petitioners.

Mr. Amey Deshpande, Advocate for the Respondent Nos. 1 to 6.

Mr. Y. Y. Dabake, APP for Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 5th FEBRUARY, 2024.

P.C.:

1. The Petitioner is the Original Complainant in M.A.
No.45 of 2012 filed in the Court of learned JMFC, Nashik
under Section 156 (3) of Cr. P. C. against Respondent Nos.1 to

13 for the offences punishable under Sections 406, 420, 465, 467, 468 read with Section 34 of the Indian Penal Code ("IPC").

2. The learned Magistrate vide order dated 28/05/2012 directed an enquiry under Section 202 (1) of Criminal Procedure Code (Cr. P. C.). Upon receipt of the police report, process was issued against the accused vide order dated 22/10/2012.

3. The case of the complainant is that agricultural land Gat No.225, admeasuring 7 hectares 86 R is owned by Respondent Nos.2 to 7 which is their ancestral property. Accused Nos.1 to 3 were in possession of the property. Accused Nos.4 to 6 are relatives of Accused Nos.1 to 3. Accused No. 4 is the niece of Accused No.1 and sister of Accused Nos.5 and 6. Said land was cultivated by Accused Nos.1 to 3. Father of the Accused Nos.1 to 3 and 5 and 6 was tenant and was cultivating the land. After the death of the father of Accused Nos.1 to 3 namely Ganpat Deoram Gavali, names of Accused Nos.1 to 3 were entered in 7/12 extract. The mother of

Accused No.4 is dead and therefore, name of Accused No.4 was entered on 7/12 extract. The names of Accused Nos.1 to 6 were entered as tenant of the said land in 7/12 extract. They have an application before the Sub Divisional Officer, Nashik under the provisions of Tenancy Act to declare them owner. The said appeal was decided in favour of Accused Nos.1 to 6 and they are directed to deposit the amount.

4. The Accused Nos.1 to 6 became owners of the property. Subsequently, the Accused Nos.1 to 6 have shown the order of Sub Divisional Officer ("SDO") to the complainant and told that they are the owners of the said property. Thereafter, the complainant agreed to purchase the said property for consideration of Rs.15 lakhs. According, initial receipt i.e. Isar Pavati was executed on 23/07/2008. Agreement to sale was executed in favour of the complainant and amount to Rs.10 lakhs was paid vide various cheques. All the cheques are honoured and Accused persons have received consideration amount. Accused Nos.1 to 6 executed agreement with Accused Nos.7 to 12. Accused No.13 is the original owner of the suit property. There was compromise between Accused Nos.1 to 6

and 13 and therefore names of Accused Nos.1 to 6 are deleted from the record of right. Thereafter, Accused No.13 executed agreement to sale in favour of Accused Nos.7 to 12 and in this way, complainant was cheated.

5. The complainant filed by a private complaint. The learned Magistrate has taken cognizance and called the report under Section 202 of Cr. P. C.

6. The Revision Application preferred by Respondent No.1 is Criminal Writ Petition No. 310 of 2016 was allowed by the Sessions Court, vide order dated 04/12/2015 on the ground that there was civil dispute between the parties. The nature of dispute is of civil nature.

7. The Revision Application preferred by Respondents in Criminal Writ Petition No. 311 of 2016 was also allowed by learned Sessions Judge.

8. The learned Advocate for the Petitioner submitted that the learned Magistrate has taken cognizance of the complaint by issuing process, prima facie case was made out.

The Revisional Court ought not to have set aside the order of process. Before issuing process the learned Magistrate has called for a report under Section 202 of Cr. P. C. The police conducted investigation and submitted a report. The report indicates that investigation revealed the commission of offence, the Accused Nos.1 to 3 obtained cheque of Rs.51,000/- on 23/07/2008 and issued an Isar Pavati relating to Gat No.225. Thereafter agreement for sale was executed on 25/07/2008 in the office of the Advocate and it was notarized on 28/07/2008. The person who had witnessed the agreement for sale has confirmed that they have signed the document and there was transaction between the parties. Thus, the order of issuing process was passed by learned Magistrate considering the report under Section 202 of Cr. P. C. and material on record. The complaint should not be dismissed. At that stage the Sessions Court has ignored the police report. There was documentary evidence to establish the complainant case.

9. Learned counsel for the Respondents submitted that dispute is purely of civil nature. There was no inducement to the complainant there is no ailment of cheating. The report

under Section 202 of Cr.P.C. is not binding on the Court. The learned Magistrate ought not to have issued the process. There is no infirmity in the order passed by the Sessions Court.

10. Accused No.13 is the original owner of the agricultural land. Accused Nos.1 to 6 were tenants in the land. Original tenant was Ganpat Deoram Gavali. He was father of Accused Nos.1 to 3 and 5 and 6. They approached the Sub Divisional Officer ("SDO") for declaring them owner of the property. They were directed to deposit amount. The said order was challenged by Accused No.13 by preferring revision and there was compromise between Accused Nos.1 to 6. Their names were deleted. Accused No.13 has executed agreement to sale in favour of Accused Nos.7 to 12. In the agreement dated 28/07/2008, it was specifically mentioned that Accused Nos.1 to 6 are the tenants of the property. They have approached to S.D.O. and declared as owners. It is also stated that Ramkrushna Bansi Lagad has challenged the order of S.D.O. by preferring Revision No.9 of 2004. There is compromised between Ramkrushna Bansi Lagad and Accused

Nos.1 to 6. The pendency of Revision was disclosed to complainant and the complainant has agreed to purchase the suit property. The matter is subjudice before the Tenancy Court. There was agreement between Accused Nos.7 to 12 and Accused No.13 to sale the suit property to Accused Nos.7 to 12. The Complainant has filed Special Civil Suit No.325 of 2012 for specific performance which is pending before the Court. Thus, there is civil dispute between the parties. The Accused Nos.1 to 6 have not concealed any fact from the complainant. There is no evidence to show that there was dishonest intention. All the facts are disclosed to the complainant.

11. The learned Sessions Judge has considered the aforesaid aspects and observed that there was Civil dispute between the parties. The nature of dispute is of civil nature. No dishonest intention is revealed from the complaint. The order of the learned Magistrate issuing process reflects non-application of mind and it was passed mechanically.

12. In the light of a nature of transaction, documents adjudicated between the parties, averments made in the complaint, I do not find any reason to interfere in the impugned orders. The dispute is purely of Civil nature. There is no element of any offences alleged by the complainant. The learned Sessions Judge has rightly passed the impugned orders.

ORDER

Criminal Writ Petition No.310 of 2016 and Writ Petition No.311 of 2016 are dismissed and disposed of.

GAYATRI
RAJENDRA
SHIMPI

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(PRAKASH D. NAIK, J.)