IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.753 OF 2018

Irfanullah Habibullah Farooqui
Aged 46 years, Occupation Business,
Khatija Mansion, 1st Floor, Room No.4,
82, Cyrus Avenue, Agripada,
Mumbai 400 008 .. Petitioner
vs.
1. State of Maharashtra ..

2. Dilnavaz Phirroze Patel
124, 12th Floor,
Jolly Maker Apartment-3,
Cuffe Parade, Mumbai 400 005 .. Respondents

Mr. Aditya Sharma with Himanshu Agarwal i/b B. Legal Services LLP for the Petitioner.
Mrs. A. A. Takalkar APP for the Respondent No.1-State.
Mr. Chaitanya Kotnis for Respondent No.2.

CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.

RESERVED ON : 8th JANUARY, 2024
PRONOUNCED ON : 23rd FEBRUARY, 2024

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) Petitioner-accused in the F.I.R. bearing C.R. No.34 of 2017, dated 16th August 2017, registered with DCB CID Unit-1, Mumbai, under Section 420 of the Indian Penal Code, has preferred this Petition under Article 226 of the Constitution of India read and Section 482 of the Code of

Criminal Procedure, 1973 for quashing the said F.I.R.

2) Heard Mr. Sharma, learned Counsel for the Petitioner, Mrs.Takalkar, learned APP for the Respondent No.1-State and Mr.Kotnis, learned Advocate for Respondent No.2. Perused the record.

3) Record indicates that, after receipt of notice, the Respondent No.2 filed his affidavit in reply. Thereafter, by an Order dated 27th June 2018, this Court directed that, until further orders the charge-sheet not to be filed in the present crime. Rule was issued on 8th August 2018, and interim relief in terms of prayer clause (c) was granted.

4) The impugned F.I.R. was registered on the report of the Respondent No.2 wherein it is narrated that, husband of the Respondent No.2 owned a bungalow constructed in 10 *gunthas* land, at Lonavala. Out of said property, 3 *gunthas* of land with three rooms constructed thereon, on the side of the bungalow, were given on lease to M/s. Kapol Sanitorium. In the year 2000, the first floor of the bungalow was given on rent to one Faruddun Calcuttawala because husband of the Respondent No.2 had borrowed some money from him. Said rent agreement was subsequently canceled. In the year 2010, husband of the Respondent No.2 suffered paralysis. Husband of the Respondent No.2 had a factory namely ‘Benelon Industries’, at Andheri, Mumbai.

4.1) It is alleged that, sometime in the year 2013, the Petitioner visited at Respondent No.2 to see her ailing husband. At that time, the Respondent No.2 told him that, their financial condition is not good. Therefore, the Petitioner assured her that, he would give some money out of the proceeds of auction of her husband's said factory, at MIDC, Andheri, Mumbai. After some days, the Petitioner gave a cheque of Rs.5,00,000/- to the Respondent No.2. Thereafter, the Respondent No.2's husband expired in the year 2014.

4.2) It is alleged that, since it was difficult to maintain the said bungalow, the Respondent No.2 told the Petitioner that she wants to sell that bungalow. In July 2014, Shahrukh Calcuttawala son of said Faruddun Calcuttawala and his henchman forcibly took possession of the first floor of the said bungalow.

4.3) On 31st August 2015, the Petitioner took the Respondent No.2 to the Old Custom House at Fort, Mumbai and obtained her signature on stamp papers and on perusing the papers of the said bungalow, the Petitioner told the Respondent No.2 that, her husband's name should be deleted from the property card of the said bungalow, by signing documents before the Sub-Registrar, at Lonavala.

4.4) On 18th November 2015, the Petitioner took the Respondent

No.2 to the Sub-Registrar's office at Lonavala and obtained her signature and of two witnesses on a stamp paper before the Sub-Registrar. At that time, the Respondent No.2 presumed that, her signature might have been taken to delete the name of her husband, as above. On the next day, the Petitioner visited at the Respondent No.2 and told that he would purchase that bungalow and the price was fixed at Rs.1,25,00,000/- out of which the Petitioner paid Rs.6,00,000/- by a Demand Draft to the Respondent No.2. However, the Petitioner avoided to execute the sale deed for one or other pretext. Thereafter, the Respondent No.2 learnt from said Calcuttawala that, she has sold the said bungalow to the Petitioner as per the information received from the Sub-Registrar's office. Said Mr. Calcuttawala also obtained a copy of the said sale deed.

4.5) Thus, the said sale deed recorded that, the transaction therein is for Rs.1,00,00,000/- out of which Rs.6,00,000/- were paid by Demand Draft and balance Rs.94,00,000/- would be paid by the cheque of Bank of India. However, said cheque was not given to the Respondent No.2. It is alleged that on 4th April 2017, a person by name Harvindersingh and his son Tanweersingh informed the Respondent No.2 that, the Petitioner has kept him as a tenant in the said factory of her husband and the Petitioner has been collecting monthly rent of Rs.1,00,000/-from him in the name of her husband and for that purpose, her husband has given a Power of Attorney to the Petitioner. However, when the Respondent No.2 saw the Power of Attorney, she found that her husband's signatures thereon were forged. The Petitioner never paid the rent amount to the Respondent No.2. Thus, the Petitioner cheated the Respondent No.2. Thereafter, the Petitioner avoided to complete the transaction by paying the balance money. The Respondent No.2 issued a legal notice and informed the Petitioner that the sale deed and the Power of Attorney are cancelled, but it was of no use. Therefore, the Respondent No.2 lodged the said report and thus present crime is registered.

5) Mr.Sharma, learned Counsel for the Petitioner submitted that, the transaction in question is of civil nature. On 18th November 2015, the Respondent No.2 had entered into the sale deed with the Petitioner in respect of the said non-agricultural land or ground together with the bungalow, at Lonavala for a consideration of Rs.1,00,00,000/-. At that time, the Petitioner handed over a demand draft of Rs.6,00,000/- to the Respondent No.2 and a cheque for Rs.94,00,000/-, dated 18th November 2015, drawn on his banker. However, by her letter dated 26th December 2015 (Exhibit-C), the Respondent No.2 informed the Petitioner that the said cheque was lost, hence, in lieu of the said cheque the Petitioner paid her Rs.33,75,000/- by cash *vide* receipts (Exhibit-D colly). Thereafter, the

Petitioner learnt that Mr.Faruddun Calcuttawalla was occupying the said bungalow. On enquiry said Faruddun Calcuttawalla showed a copy of lease deed between him and the Respondent No.2 in respect of said property (Exhibit-E). The Petitioner also found that the Respondent No.2 has also leased the land adjoining the bungalow to Sheth Laxmidas Morarji Dharmadas Vallabhdas R. T. Modi & Putlibai Charity Trust. In view of the said third party rights, the Petitioner asked the Respondent No.2 to refund the amount invested by him with reasonable compensation for playing fraud upon him. Thereafter, the Respondent No.2 told the Petitioner that, she has filed a complaint against Mr. Shahrukh Calcuttawalla, son of Faruddunn Calculttawalla with the concerned police station and she would handover vacant possession of the suit property to the Petitioner. It is submitted that thereafter settlement was arrived at between the parties. Hence, the Respondent No.2 drawn a cheque dated 24th February 2017, for Rs.46,75,000/- in the name of the Petitioner. However, the said cheque dishonoured when presented for encashment. Thereafter, the Respondent No.2 assured the Petitioner that the said cheque will be honoured in due course and requested him not to initiate an action under Section 138 of the Negotiable Instruments Act and further requested the Petitioner to wait for sometime as she was trying to find a purchaser for higher value and pay off the monies of the Petitioner. However, later on the Respondent No.2 lodged a false report pursuant to which the impugned F.I.R. came to be registered. Thus, said F.I.R. is false and hence it may be quashed.

6) Learned APP strongly opposed the Petition stating that, there is *prima facie* case against the Petitioner of the offences alleged in the F.I.R.

6.1) Mr. Chaitanya Kotnis for the Respondent No.2 submitted that, even though the sale deed was allegedly registered on 18th November 2015, the Petitioner signed the same on 19th November 2015. This fact coupled with narration in the F.I.R. is sufficient to infer that the Petitioner, under the guise of deleting the name of the husband of Respondent No.2, tried to play fraud upon her and intentionally did not sign the sale deed on 18th November 2015. The Petitioner never issued the cheque for Rs.94,00,000/-. The Petitioner never paid Rs.33,75,000/- by cash to the respondent No.2 and there is no documentary proof of such payments. It is stated that, the Respondent No.2's signature on the alleged letter dated 26th December 2015 is forged one. As such there is no substance in the Petition.

7) Considering the rival submissions one thing is very clear that, if according to the Petitioner he was intending to purchase the subject property for a consideration of Rs.1 crore, then it is safe to infer that, sufficient amount was lying in his bank account to honour the cheque of

Rs.94,00,000/-. However, the Petitioner has not produced his bank record in this regard. Secondly, if the Petitioner had sufficient money, then a question that arises here is, why he did not pay the entire consideration of Rs.1 crore to the Petitioner on or before the date of execution of the sale deed. According to the Petitioner, he is a businessman, but nowhere in the Petition he has explained the nature of his business and his monthly or annual income therefrom. He has also not explained as to whether he was paying Income Tax or not. Further, it is pertinent to note that, according to the Petitioner, when the Respondent No.2 informed him that the cheque was lost, he paid her total Rs.33,75,000/- in cash. *Vide* receipts (Exhibit-D). The said amount was paid as follows : Rs.9,50,000/- on 27th April 2016, Rs.8,50,000/- on 28th April 2016, Rs.9,50,000/- on 3rd May 2016 and Rs.6,25,000/- on 23rd May 2016. However, the Petitioner has not explained as to how he arranged the amount totalling to Rs.33,75,000/- within such short period, whether the said amount was lying in his bank account, when did he withdraw it or whether he borrowed it from others. In view of these circumstances, we are of the opinion that, there is *prima facie* case against the Petitioner of the offences alleged in the F.I.R.

8) The Petitioner has claimed that, after the sale deed he came to know about the alleged third party rights created in the property by the

respondent No.2. However, according to us, this is completely incorrect because no person would buy such property for a huge consideration of Rs.1 crore without visiting such property and without verifying as to whether said property is in possession of third person or not that. This conduct of the Petitioner also fortifies our conclusion that, there is *prima facie* case against the Petitioner.

9) Considering the facts and circumstances of the case, the submissions made on behalf of the Petitioner are nothing but constituting his defence available in actual trial of the offence. Therefore, veracity of the said defence cannot be examined in this Petition as it would amount to a mini trial, which is not permissible while exercising the jurisdiction under Article 226 of the Constitution of India.

10) In view thereof, the Petition fails and accordingly, the Petition is dismissed.

(SHYAM C. CHANDAK, J.) **(A. S. GADKARI, J.)**