

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1415 OF 2022

Kumar Udhav Ahir, Age 57 years,
Occ.Business, Address at Marathon
Nex Zone, Altis 2405, Palaspe Junction,
Panvel-410206.

Petitioner

versus

1. The State of Maharashtra
2. Mahendra Shah, 13/20/322,
Shanti Niketan, Matunga (East),
Mumbai-400019.

3. Ms.Neeta Udhav Ahir,
D-803/Lake Florence Office,
Aadi Shankaracharya Road,
Lake Home, Phase-I, Powai,
Mumbai-400076.

4. Deepak Udhav Ahir,
Flat No.102, C-S, Saket Complex,
Majiwada, Thane-400601.

Respondents

Mr.Ashok Kavade, Advocate for Petitioner.

Mr.Ganesh Gole i/by Mr.Ateet Shirodkar, Advocate for Respondent
nos.2 and 3.

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

CORAM : PRAKASH D. NAIK, J.

DATE : 18th January 2024

PC :

1. Petitioner is the complainant in CC No.1396/Misc/2020.
Respondent nos.2, 3 and 4 were accused nos.1, 2 and 3 in the
complaint. Respondent no.3 is the sister and Respondent no.4 is the
brother of Petitioner. Respondent no.2 is the builder.

2. Brief facts of the complaint filed by Petitioner are as under :-

(a) Complainant is the youngest son of late Udhav Laxman
Ahir and late Savita Udhav Ahir;

(b) Accused no.1 is the builder and developer carrying on business in the name of Aakanksha Enterprises and Royal Constructions;

(c) In 1976 Mr.Parshuram Laxman Ahir sold his share of plot to his brother Mr.Udhav Ahir. Flat No.301 was inherited by Udhav Ahir and Savita Udhav Ahir by way of family arrangement. Agreement dated 8th October 1997 executed between family members attested with Power of Attorney dated 8th October 1997 giving irrevocable ownership of Flat No.301 to Petitioner after demise of Udhav Ahir and Savita Udhav Ahir;

(d) Flat No.301 situated in Tulip, Plot No.720, Parsi Colony, Dadar, Mumbai, was handed over to Udhav Ahir and Savita Udhav Ahir in April-1998. Udhav Ahir was insisting that Deed of Transfer be registered. Accused no.1 kept on delaying the registration. He issued maintenance bill in the name of late Udhav Ahir and late Savita Udhav Ahir;

(e) Complainant started interior work in flat and completed it in April-1999;

(f) The marriage of complainant was solemnized in November-1999. He started residing with his wife at Flat No.301, Tulip, Plot No.720, Parsi Colony, Dadar, Mumbai, along with his father late Udhav Ahir and mother late Savita Udhav Ahir;

(g) There were differences between mother of complainant and his wife. There were quarrels between them;

(h) In 2001 late Uddhav Ahir made a declaration that after his demise the property viz Flat No.301, Tulip, Plot No.720, Parsi

Colony, Dadar, Mumbai will be inherited by his wife Savita Udhav Ahir and after her demise as per family arrangement agreement the said property will be inherited by complainant. The complainant was fed up with the quarrels between his mother and wife and decided to leave the ancestral property viz Flat No.301, Tulip, Plot No.720, Parsi Colony, Dadar, Mumbai on 28th February 2002;

(i) Complainant, his wife, son and father Udhav Ahir started living in Pune for a period of about two years. The father of complainant kept on insisting to take rental flat in Dadar. Due to poor financial condition the complainant could not take rental flat in Dadar. Complainant's father could not adjust himself at Pune. Complainant shifted to Navi Mumbai at the instance of his father. Complainant's father could not adjust himself at Navi Mumbai and moved out to home for elders at Sion, Mumbai in June-2005. Complainant would support him financially;

(j) On 28th May 2019 complainant came to know that his father Udhav Ahir passed away on 10th July 2017. Complainant went to Tulip building in which he had inherited the property i.e. Flat No.301. He was under impression that his mother would continue to stay at Flat No.301 as per family settlement agreement;

(k) Complainant learnt that Flat No.301 was sold by accused no.1 in collusion with accused nos.2 and 3 and his mother with mala fide intention to deprive the complainant and his wife of their absolute right over the inherited right owned by his grandfather and father;

(l) Complainant's father had entered into a joint venture development of the property through Deed of Joint Venture dated

16th April 1992 between him and Sundarji Mulji Shah and Mehendra Lakhamshi Shah;

(m) As per agreement, I was agreed by the parties that owner i.e. Udhav Ahir, his daughter and son has one tenement each in their respective possession. The agreement stated that party of second part and third part had agreed in respect of tenement owned by the party of first part shall be entitled to the same area in the redeveloped reconstructed building. Thus, the owner was entitled for three tenements in the redeveloped building. The complainant was occupying one tenement with Nita Ahir was occupying one tenement and Deepak Ahir was occupying one tenement;

(n) As per joint venture agreement it was agreed by the party of the second part and the third part that party of the first part i.e. owner Udhav Ahir, Kumar Ahir and Nita Ahir are occupying one tenement each;

(o) Deed of Confirmation was made at Mumbai on 10th May 1997 between Aakanksha Enterprises represented by Mahendra Shah as party of one part and Nita Udhav Ahir as party of second part and Udhav Ahir and Savita Udhav Ahir were referred as Purchasers of third part;

(p) The property was fraudulently transferred by accused. The signature of Udhav Ahir was forged by accused;

(q) Complainant forwarded a written complaint to Inspector of Police, Matunga. The complainant forwarded written complaint to Deputy Commissioner of Police, Matunga against accused no.1 on 30th October 2019. The complainant sent e-mail of complaint to DGP, Maharashtra State. Since no action was initiated, he filed private

complaint seeking directions u/s.156(3) of Code of Criminal Procedure.

3. Learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai, dismissed the complaint vide order dated 10th February 2021.

4. Petitioner preferred Criminal Revision Application before Sessions Court challenging order dated 10th February 2021. Learned Additional Sessions Judge vide order dated 12th January 2022 dismissed the revision application.

5. Learned advocate for Petitioner submitted that both the orders under challenge are contrary to law. Cognizable offence was made out in the complaint which required investigation. The complaint ought not to have been rejected. The complaint made out prima facie cognizable offence and prayer for directing investigation ought to have been allowed by the Trial Court. The complainant had complied procedure u/s.154(4) of Cr.PC. The complainant had also filed affidavit in support of the complaint. It was an error by the Court of Magistrate to dismiss the complaint. The accused were involved in committing offence of forgery. Release Deed was forged. Handwriting expert's opinion was collected which shows that document was forged. The Court ought not to have refused investigation u/s/.156(3) of Cr.PC considering the nature of offence and need for investigation by police. In spite of compliance of procedural safeguards the complaint has been dismissed. The flat was sold by accused by acting in connivance with each other. After the death of his mother, the flat was inherited by complainant. The accused were not entitled to transfer the property to another person.

6. Learned advocate for Respondents submitted that there is no

infirmity in the impugned orders. Learned Magistrate has rightly rejected the complaint and the said order has been rightly confirmed by Sessions Court. Joint venture development of the property in question through Deed of Joint Venture dated 16th April 1992 entered into between Uddhav Ahir, Nita Ahir and M/s.Aakanksha Enterprises for allotment of flat as permanent alternate accommodation in redeveloped new building in place of old building known as Udhav Niwas situated at Plot No.720, Parsi Colony, Dadar, Mumbai. Respondent no.3 was the original tenant of room no.2 and she had voluntarily executed Deed of Confirmation on 5th May 1997 and transferred her right, title and interest under the agreement dated 14th November 1992 in favour of Mr.Udhav Ahir and Savita Udhav Ahir. The Deed of Confirmation dated 5th May 1997 was executed. Udhav Ahir and Savita Udhav Ahir became joint owner of Flat No.301 in building Tulip. Mr.Udhav Ahir vide Release Deed dated 20th July 2002 released is undivided half share in the said flat in favour of Savita Udhav Ahir. Respondents were not party to the said deed dated 10th July 2002. The release deed was notarized by the notary Savita Udhav Ahir was desirous of surrendering benefits of agreement dated 14th November 1992 and 5th May 19967 to Respondent no.2. Petitioner did not raise issues since last 15 years. Dispute between parties appears to be of civil nature. Petitioner did not comply Section 154(1) and 154(3) of Cr.P.C. The complaint was rightly rejected by the Court of learned Magistrate. Proper affidavit in support of complaint was not filed in accordance with requirement of law.

7. Mr.Gole has relied on following decisions :

(i) Babu Venkatesh and others Vs.State of Karnataka and

another – (2022)5-SCC-639;

(ii) Harry Inder Dhaul Vs. State of Maharashtra through Police Station Officer and others – 2023-SCC OnLine-Bom-200.

8. The complaint was apparently filed after enormous delay. The dispute relates to alleged share claimed by complainant in the property. Respondent nos.3 and 4 are the sister and brother of Petitioner/complainant. The complainant has alleged that he came to know that Flat No.301 situated at Tulip, Plot No.720, Parsi Colony, Dadar, Mumbai, was sold on 28th May 2019. The complainant alleges that his father was lastly residing in home for elders. His father had died on 10th July 2017. However, complainant came to know about his death on 20th May 2019. According to complainant his father had started residing in home for elders in June-2005. The complainant was supporting him financially. In spite of that he learnt about death of his father two years after he died which indicate he was not in touch with his father. The complainant also contended that he came to know that his mother has also died. Learned Magistrate had observed that civil dispute is subjudice amongst parties. Apparently there was no civil dispute pending between parties. However, merely on that ground the impugned order dated 10th February 2021 cannot be set aside. Learned Magistrate had also observed that criminal law cannot be set in motion to satisfy personal vendetta and there is no compliance of Section 154(3) of Cr.P.C in letter and spirit. There is no infirmity in the order passed by learned Magistrate. The dispute is purely of civil nature. Learned Magistrate has rightly refused to exercise his jurisdiction for investigation u/s.156(3) of Cr.P.C. The order of learned Magistrate was not interfered by learned Sessions Court by dismissing revision application preferred by Petitioner. The

father of Petitioner died in 2017 and mother died in 2020. The property was sold in 2015 and money was paid to mother of Petitioner by cheque. Learned Sessions Judge while rejecting the revision application has observed that there appears to be civil dispute between parties and many documents are annexed to the petition which needs to be considered by Civil Court for establishing rights. Therefore enquiry was rightly contemplated before registering offence. The complainant had contended that copy of complaint was sent by e-mail. There are no averments about being served through by post or personally. The affidavit was not annexed to the complaint.

9. In the case of Babu Venkatesh and others (supra), the Supreme Court had observed that application u/s.156(3) without affidavit duly sworn by complainant cannot be entertained by Magistrate. In the case of Harry Inder Dhaul (supra), this Court has observed that before invoking the provisions of Section 156(3) of Cr.P.C, complainant has to make various compliance, e.g. approaching authorities u/s.156(1) and 156(3). Necessary averments regarding compliance with Sections 156(1) and 156(3) should be incorporated with material particulars. The documents in support of such averments must be filed on record.

10. Considering aforesaid circumstances I am of the opinion that no case is made out to set aside impugned orders. Petition is devoid of merits and deserves to be dismissed.

ORDER

(i) Writ Petition is dismissed.

(PRAKASH D. NAIK, J.)