

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2769 OF 2024

Gopal s/o. Surajmal Mishra & Anr.

...Petitioners

Vs.

The State Of Maharashtra & Anr.

.....Respondents

Mr. Hitesh Biherani (appeared through V/C) i/b M. Namrata, for the Petitioners.

Mr. Ajay Patil, APP for Respondent No.1-State.

**CORAM : SARANG V. KOTWAL AND
DR. NEELA GOKHALE, JJ.**

DATE : 28th NOVEMBER 2024.

PC.:-

1) This Petition is filed for quashing of the FIR registered vide C.R.No.804 of 2023 at MIDC Police Station, Brihanmumbai on 15th December 2023 for offences punishable under Sections 406 and 420 of the Indian Penal Code, 1860 ('IPC').

2) Heard.

3) The FIR is lodged by the Respondent No.2 ('Informant') herein. He has stated that he was in the business of making glass components for buildings. In 2022, he met the present Petitioner, who was Informant's brother's friend. The Petitioner represented to the Informant that he and his wife were owners of Mishra Builders and

Developers and they had land at Plot No.104, Survey No.37-1A, Taluka: Paratwada, District: Amravati admeasuring 5693.97 sq.ft. The Petitioner gave the Informant documents in respect of that land. The Informant decided to purchase that land for Rs.21 Lakhs. The Informant accordingly transferred Rs.6 Lakhs on 19th August 2022 through RTGS to bank account of the Petitioner. On 5th September 2022, he transferred Rs.10 Lakhs and balance amount of Rs.5 Lakhs was to be paid after the transaction was completed. The Petitioner took additional two lakhs for putting up fence around the plot. On 14th September 2022, the Informant had got agreement for sale executed from the Petitioner. At that time, the Petitioner's wife was also present. The Informant had told the Petitioner that he would be visiting his village on 29th September 2022. Accordingly, the Informant went to their village to complete the execution of the sale deed. He had informed the Petitioner about his visit. The Petitioner himself told the Informant to come to the Tehsildar office. The Informant accordingly went there but the Petitioner was not present. The Informant repeatedly called him but the Petitioner did not receive his calls. The Informant waited at Tehsildar office till 4.30 p.m. Ultimately, since the Petitioner did not turn up, the Informant executed a document at

Tehsildar's office showing his presence. After that the Informant sent him a notice demanding back his money. The Petitioner replied to that notice and contended that the Informant himself had taken that amount of Rs.16 Lakhs as loan from the Petitioner. According to the Informant, this was a false statement. The Petitioner refused to pay the money and, therefore, the Informant lodged this FIR.

4) Learned counsel for the Petitioner submitted that the land is at Paratwada, District : Amravati and therefore, the MIDC Police Station at Mumbai had no jurisdiction. He submitted that at the highest, it can be a civil jurisdiction and the only remedy available to the Informant is to file a suit for specific performance. Learned counsel for the Petitioner relied on the Reply sent by the Petitioner to the Informant and contended that the money was taken by the Petitioner but it was in repayment of the amount given by the Petitioner himself to the Informant by way of loan of Rs.16 Lakhs in cash and therefore, no offence is made out.

5) Learned APP pointed out contrary stand taken up by the Petitioner in the Reply dated 31st July 2023 which is at Page 33 of the Petition. The Petitioner has accepted that the said amounts of Rs.6 Lakhs and Rs.10 Lakhs were received by him through RTGS in the

months of August and September 2022. In fact, this particular fact was specifically accepted by the Petitioner in paragraph 2 of the said Reply. However, in paragraph 4 of the Reply, the Petitioner has mentioned that the said amounts were in repayment of loan of Rs.16 Lakhs which the Petitioner had advanced to the Informant by way of loan of Rs.16 Lakhs. The learned APP pointed out that in another Reply dated 3rd April 2023 issued on behalf of the proprietor of Mishra Builders and Developers, Ms. Savita Mishra, it was denied that money was ever received by them. It is a contrary stand taken by the Petitioner and his wife.

6) We have considered these submissions. The contention that the Petitioner had advanced a loan of Rs.16 Lakhs to the Informant is not supported by any documentary evidence or by evidence of any witness at all. The Petitioner has taken a contrary stand, which is clear from the averments in the Replies dated 31st July 2023 and 3rd April 2023, which are at Pages 33 and 39 of the Petition respectively. The FIR itself shows that the Petitioner had obtained Rs.16 Lakhs on false representation and thereafter had called the Informant for registration of sale deed but did not remain present deliberately. The Informant had established his *bona fides* by

remaining present in the Tehsildar office. From the facts of this case, it is quite clear that the Petitioner always had dishonest intention right at the inception when he made false representation and obtained Rs.16 Lakhs from the Informant as mentioned earlier. His contention that the Petitioner himself had advanced loan of Rs.16 Lakhs in cash is not supported by any material at all. From the facts of the case, it is not mere simple civil dispute but there is strong flavour of criminality coming out from it. Part of cause of action viz. transfer of money, etc. has taken place within the jurisdiction of M.I.D.C. Police Station, Brihanmumbai. Therefore, the FIR needs to be investigated and the Petitioner needs to be prosecuted. No case for quashing of the FIR is made out.

7) Petition is dismissed.

(DR. NEELA GOKHALE, J.)

(SARANG V. KOTWAL, J.)

Digitally
signed by
SHAMBHAVI
NILESH
SHIVGAN
Date:
2024.12.04
15:36:00
+05'30