IN THE HIGH COURT OF JUDICATURE AT BOMBAY : NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO. 260/2024

1. Maya w/o Rajesh Shah,
aged about 48 yrs., Occ. Household,

2. Rajesh s/o Suresh Shah,
Aged about 54 yrs., Occ. Business,

Both R/o. Lakhani Square,
Malkapur, Tq. Malkapur,
Dist. Buldhana.

... APPLICANTS

VERSUS

1. State of Maharashtra,
through P.S.O. Malkapur City,
Malkapur, Dist. Buldhana.

2. Suresh Narayan Mandvekar,
Aged about 72 yrs., Occ. Business,
R/o. Deshpande Lane, Malkapur,
Tq. Malkapur, Dist. Buldhana.

...NON-APPLICANTS

Mr. J.B. Ghandhi, Advocate for applicants.
Mr. A.M. Joshi, Addl. Public Prosecutor for non-applicant No.1/State.
Mr. V. Sambre, Advocate with Mr. R. Vyas, Advocate for non-applicant No.2.

CORAM : VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.
DATE : 05.09.2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2. **Admit**.

3. By this application, the applicants are seeking to quash charge-sheet bearing RCC No. 108/2023 arising out of Crime No. 01/2023 registered with Police Station Malkapur City, Malkapur, Dist. Buldhana for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

4. The facts in brief are that on the basis of report dated 05.01.2023 lodged by non-applicant No.2/informant Suresh, crime has been registered. It is prosecution case that co-accused Dhiraj was owner of a residential flat situated at Malkapur, Dist. Buldhana. On 09.09.2021, co-accused Dhiraj entered into agreement to sell with the

informant about the subject flat in total consideration of Rs. 15,00,000/-. Notorized agreement was executed and towards part consideration, informant has paid Rs. 5,00,000/- to co-accused Dhiraj by way of banker cheque. It was agreed that co-accused Dhiraj would execute sale-deed on or before 16.08.2022. However, co-accused Dhiraj has avoided to execute sale-deed as per agreement. The time was extended by executing a writing between the parties.

5. It is informant's case that he has issued a public notice on 21.02.2022 about the transaction entered into between them. The informant learnt that co-accused (owner) Dhiraj was about to sell subject flat to the applicants, therefore he met them and apprised about the agreement to sell dated 09.09.2021. The informant stated that though the applicants were asked for not enter into transaction with co-accused Dhiraj, still they had purchased said flat on 30.8.2022 by registered instrument and thus, offence of cheating.

6. The learned counsel appearing for applicants would submit that the contention made by the informant in the First Information

Report ("FIR") that the applicants were made aware about earlier agreement is totally false. In this regard, the applicants took us through certain correspondence between the parties to indicate that there was no such communication. It is submitted that the applicants are subsequent purchasers who were not in picture when the initial agreement to sell dated 09.09.2021 was executed. It is submitted that the applicants are subsequent purchasers who have paid entire consideration by raising loan from the Bank and thus, no criminality would attract. According to the applicants, they have also been deceived by co-accused Dhiraj, but in any way they cannot be dragged into criminality alleged against main accused Dhiraj.

7. On the other hand, the learned APP as well as the learned counsel appearing for non-applicant No.2 would submit that the applicants were made aware of the earlier transaction, still in connivance with the main accused, they have deceitfully entered into transaction with intent to cause wrongful losses to the informant. It is argued that though the applicants were not concerned with the initial agreement, however the applicants act of knowingly entering into sale

transaction attracts criminal intention in terms of Section 35 of the Indian Penal Code.

8. At the inception, it is necessary to note few admitted events occurred in the proceeding. On 09.09.2021, initial agreement to sell was executed in between the informant and Flat owner co-accused Dhiraj, wherein the time for performance was fixed till 16.08.2022. The informant has issued a notice for specific performance on 11.03.2022 calling upon Dhiraj to execute the sale-deed within 15 days. The said notice was replied by Dhiraj on 24.03.2022 expressing that he would execute sale-deed till scheduled date i.e. 16.08.2022. It was followed by another notice issued by informant dated 01.07.2022 once again reiterating for specific performance. The said notice was replied by Dhiraj on 07.07.2022 confirming that he would execute sale-deed till 16.08.2022. Thereafter, by communication dated 13.08.2022, Dhiraj sought time to execute sale till 22.08.2022. On that date itself, a writing was made in between the parties, whereby time was extended till 29.08.2022. Again by another document dated 08.09.2022, time for performance was extended till 16.09.2022. All

these writings are part of the charge-sheet.

9. In aforesaid background, the allegation made by informant is to be tested. The issue involved is whether the applicants were aware about earlier transaction, if yes, whether criminal liability could be fastened against them. Secondly even if it is assumed that despite knowledge of prior agreement, they entered into sale transaction on 30.08.2022, whether it would establish the essential ingredient to constitute the offence punishable under Section 420 of the Indian Penal Code.

10. The first informant has not mentioned specific date as to when he has apprised applicants about prior agreement. Admittedly, sale-deed executed in between Dhiraj and applicants, does not precede agreement to sell. There is no material to show as to on which basis the informant learnt that such transaction would occur in future. It requires to be noted that time to time, time for specific performance was extended, however none of the document bears a reference about the intended transaction with the applicants. Had it been the fact that,

the informant was aware about future sale to be occurred with applicants, he would have referred the same in either of his notices or asked for giving undertaking to that effect. It appears that informant was quite vigilant that even prior to the scheduled date of specific performance, he has issued a legal notices. Moreover, time was extended under written undertakings. In the said eventuality, he must have specifically asked Dhiraj for not to indulge into transaction in particular with the applicants. Thus, even on prima facie, bears it is difficult to hold that informant was aware about the so-called unwitting understanding between Dhiraj and applicants about future sale transaction. In turn, it is difficult to hold that the informant has apprised the applicants about the earlier agreement to sell.

11. Looking the matter from another angel, the informant's case is based on mere agreement to sell which does not create interest in the property. The real grievance of informant is against co-accused Dhirja who despite entering into transaction with the informant, had executed sale-deed in favour of the applicants who are third party. Thus, the allegation of deceitful executing sale-deed in favour of

applicants would be against the owner Dhiraj. When the original agreement was executed, the applicants were not in picture and thus, by any stretch of imagination, they cannot be dragged in the litigation. Moreover, execution of sale-deed from rightful owner, even assuming in-defiance of earlier agreement it cannot simply attract the offence of cheating unless the knowledge and deceitful intent has been demonstrated.

12. In order to constitute the offence of cheating, there must be fraudulent inducement or deception by dishonest means. Admittedly, the applicants nowhere induced the informant in any manner to enter into transaction. No deceitful intention could be gathered against the applicants who are subsequent purchasers. In the circumstances, no offence can be said to have been committed by the applicants. In appropriate, civil action, they may be necessary party, however criminal action may not lie against the applicants. In the circumstances, continuation of prosecution against them would be abuse of the process of the Court.

13. In view of above, application is allowed, We hereby quash and set aside charge-sheet bearing RCC No. 108/2023 arising out of Crime No. 01/2023 registered with Police Station Malkapur City, Malkapur, Dist. Buldhana for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code to the extent of applicants only.

14. Application stands disposed of in above terms.

(MRS. VRUSHALI V. JOSHI, J.) **(VINAY JOSHI, J.)**

Gohane