



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

CRIMINAL WRIT PETITION NO. 469 OF 2024

1. **Pramila wd/o Rajkumar Bhargav**
Aged about 67 years, Occ: Cultivator
2. **Avinash S/o Rajkumar Bhargav**
Aged about 38 years, Occ: Cultivator
Both residing at: Navathe Plot
Eknathpuram, Amravati,
Tah & Dist. Amravati
3. **Fulkumar Triloknath Bhargav**
Age; about 77 years, Occ: Cultivator,
R/o. Trimurti Nagar, Nagpur,
Also, R/o. Chamundir Explosives Pvt.
Ltd., Plot No. 2ro, near Water Tank,
Laxmi Nagar, Nagpur-22

... PETITIONERS

// VERSUS //

1. **Ramdas S/o Balaramji Ajmire**
Aged about 77 years Occ:
Agriculturist, R/o. House No. 366
Pandurang Ward, Arvi,
Distt. Wardha.
State of Maharashtra
Through PSO Police Station, Ami
Dist. Wardha
2. The State of Maharashtra, through
PSO, Police Station, Arvi
District Wardha

... RESPONDENTS

Shri Rushikesh Middalwar, Advocate along with Mr. A.M. Chandekar,
Advocate for the petitioners.
Shri Ganesh Umale, APP for the respondent No.2/State.

CORAM: G. A. SANAP, J.

DATE : 19/11/2024

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally at the admission stage. Respondent No.1 is duly served. He has not appeared before this Court.

2. In this petition, challenge is to the order dated 27.03.2024 passed by the learned Additional Sessions Judge, Wardha, whereby the learned Judge allowed the revision application filed by respondent No.1/complainant and set aside the order passed by the learned Judicial Magistrate First Class, Arvi, dated 17.01.2023. Learned Judicial Magistrate First Class, Arvi, vide order dated 17.01.2023 was pleased to discharge petitioners/accused Nos.2, 3 and 4 in Regular Criminal Case No.8/2017.

3. Respondent No.1 filed the complaint, alleging the offence of cheating, fraud and fabrication of documents against

the petitioners. The parties would be referred in this judgment by their nomenclature in the complaint. It is the case of the complainant that accused No.1 sold the property bearing house No.366, situated at Pandurang Ward, Arvi, District Wardha for total consideration of Rs.48 Lakhs to him on 10.10.2013. Accused No.1 represented to the complainant that he was exclusive owner of the property. Later on, the complainant came to know that accused Nos.2, 3 and 4 filed a suit for partition and separate possession of the said property. The said suit was compromised and a compromise decree was passed on 21.04.2015. As per the compromise decree, 1/3rd share each has been granted to accused Nos.1, 2, 3 and 4. It is the case of the complainant that accused Nos.2 to 4 knew that the sale deed of the property was already executed by accused No.1 in favour of the complainant. It is categorically stated that only with a view to cause wrongful loss to the complainant the collusive suit was filed.

4. Learned Magistrate, Arvi, after recording the verification statement of the complainant, issued the process against accused Nos.1 to 4. Accused Nos.1 to 4 appeared before the learned Magistrate. Since the case was instituted otherwise than on the police report, the learned Magistrate recorded the evidence of the complainant before charge. Learned Magistrate, on the basis of the evidence of the complainant recorded before framing the charge, has recorded a finding that no case was made out against accused Nos.2 to 4 for framing the charge and the learned Magistrate accordingly discharged them from the case.

5. The complainant challenged the said order by filing criminal revision before Sessions Court at Wardha. Learned Additional Sessions Judge, by his order dated 27.03.2024 allowed the revision application and set aside the order of discharge of accused Nos.2 to 4 dated 17.01.2023. Being aggrieved by this judgment and order, petitioners/accused

Nos.2 to 4 are before this Court.

6. I have heard learned Advocate for accused Nos.2 to 4. Learned Advocate for accused Nos.2 to 4 pointed out that accused No.1 has died during the pendency of the complaint. It is further pointed out that the order of abatement of the complaint viz-a-viz accused No.1 has been passed. Learned Advocate took me through the complaint and submitted that the principal allegation of cheating and forgery was against accused No.1. There is no averment in the complaint that either accused Nos.2 to 4 were party to the sale deed or their consent for transfer of the property in favour of the complainant was obtained. It is submitted that accused Nos.2 to 4, being the joint owners of the property, were entitled to file the suit. It is submitted that they were not aware of the sale deed of the property executed by accused No.1 in favour of the complainant. It is submitted that even if it is assumed for the sake of argument that they were aware of this transaction, that

by itself would not tantamount to giving up their right in the property. Learned Advocate submitted that evidence placed on record before charge was not sufficient to frame the charge against accused Nos.2 to 4. Learned Advocate took me through the order passed by the learned Additional Sessions Judge and submitted that learned Judge has not properly considered the undisputed facts stated in the complaint as well as the evidence adduced by the complainant before framing the charge.

7. Learned APP in all fairness submits that the finding recorded by the Magistrate in the teeth of the evidence placed on record was fully justified.

8. I have gone through the record and proceedings. Perusal of the order passed by the learned Magistrate would show that the learned Magistrate took into consideration the evidence adduced by the complainant before framing the charge. The stage for recording evidence before charge has

been provided in a warrant case instituted otherwise than on the police report. This provision has its object. Such a stage has not been provided in a warrant trial instituted on the police report. The process in a case which is registered as a warrant trial, is issued on the basis of the material placed on record and by recording the *prima-facie* satisfaction. It is to be noted that criminal prosecution is a very serious matter. A stage for recording evidence before charge has been contemplated to ensure that before framing the charge, the Magistrate must be satisfied on the basis of the material that it is sufficient to make the accused to face the ordeal of the trial.

9. I have perused the examination-in -chief of the complainant. Perusal of the evidence of the complainant would show that it is not sufficient to frame the charge against the accused Nos.2 to 4. Undisputately, the sale deed was executed by accused No.1 in favour of the complainant. It is not the case of the complainant that directly or indirectly accused Nos.2 to

4 were privy to the sale deed. Learned Magistrate has observed that the consent of accused Nos.2 to 4 for execution of sale deed has not been recorded either in the sale deed or separately. It is to be noted that dishonest intention is the basic ingredient of the crime of cheating. In order to attract Section 415 of the Indian Penal Code, it is necessary to show that there was a fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. Deception is one of the components of cheating. Perusal of the allegations made in the complaint would show that fraudulent or dishonest intention has not been spelt out. They were not party to the sale deed. It is seen that they had filed the civil suit for partition and separate possession of their property. It is true that in the said suit, they had contended that the document of relinquishment of their right in the property was created at the instance of accused No.1. Ultimately, in the suit, they filed the compromise petition. It was accepted and the suit was disposed

of. In my opinion, only on the basis of the filing of the suit by accused Nos. 2 to 4, it would be very difficult to attribute *mens rea* to accused Nos.2 to 4. Similarly, the evidence adduced before framing the charge is not sufficient to *prima-facie* make out the ingredients of the offences for which the process was issued against accused Nos.2 to 4. In that view of the matter, learned Sessions Judge was not right in setting aside the order passed by the learned Magistrate. Learned Additional Sessions Judge has failed to consider the evidence of the complainant adduced before framing the charge. Learned Additional Sessions Judge was required to record a finding as to whether this evidence was sufficient to make out the basic ingredients of the offences for which the process was issued against the accused.

10. In my view, learned Magistrate was right in discharging the accused. As such, I proceed to pass the

following order:-

ORDER

(i) The order passed by learned Additional Sessions Judge, Wardha dated 27.03.2024 is set aside.

(ii) The order dated 17.01.2023 passed by the learned Judicial Magistrate First Class, Arvi in R.C.C. No.08/2017 discharging accused Nos.2 to 4 is restored.

11. Criminal Writ Petition stands disposed of. Rule is made absolute in the above terms. Pending application, if any stands disposed of.

(G. A. SANAP, J.)