



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No. 103 Of 2024

Jayendra Suresh Patil

Age : 46 years, Occupation -Doctor,

R/o Bhade,

Tal. Shahada, Dist. Nandurbar.

.. Petitioner

Versus

State of Maharashtra

through Police Inspector,

Shahada Police Station,

Shahada, Dist. Nandurbar.

.. Respondent

* **Mr. P.N. Jain** (Appeared through Video Conferencing)

Advocate for the Petitioner.

* **Mr. K.K. Naik,**

APP for Respondent/State.

CORAM : SHAILESH P. BRAHME, J.

Date On Which The

Arguments Were Heard : **15th APRIL 2025**

Date On Which The

Judgment Is Pronounced : **21st APRIL 2025**

JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard both sides finally.

2. Petitioner who is original accused no.3 is assailing judgment and order dated 18.09.2023 passed by the Additional Sessions Judge, Shahada in Criminal Revision No.10/2023 and order dated 27.10.2022 below Exhibit-15 passed by the Judicial Magistrate First Class, Shahada, declining prayer of discharge from offence under Section 420 read with 34

of the Indian Penal Code.

3. Petitioner alongwith Digambar Chindha Marathe (Accused No.1) and Mohan Magan Patil (Accused No.2) are facing prosecution in R.C.C. No.158/2018 emanating from offence bearing C.R. No.250/2016 lodged by Magan Narsai Patil. It is contended in the First Information Report that Accused No.1 – Digambar represented Informant that he is owner of Gut No.141/2/2-B measuring 0.73 H situated at Bhade, Taluka Shahada and wanted to sell the land. Informant purchased it for Rs.1,65,000/-. The Petitioner and co-accused – Mohan assured Informant regarding title of Accused No.1 – Digambar and there was no encumbrance on the land. Later on it revealed that Accused No.1 – Digambar was not the owner and bogus revenue record was shown to the Informant. In fact land no.141/2/2 measuring 1.45 H was of joint ownership of Madhav Chindha Marathe and Accused No.1 – Digambar. The land was having charge of cooperative society. Hence offence was registered under Sections 420, 465, 468, 471 read with 34 of IPC.

4. Charge-sheet was filed on 22.11.2018. On the basis of statements, registered sale deed and revenue record, application exhibit-15 was filed for discharge by Petitioner and co-accused – Mohan Patil. It was partly allowed vide order dated 27.07.2022 by the trial Magistrate, discharging them from offence punishable under Sections 465, 468, 471 read with 34 of IPC. Being aggrieved, Petitioner preferred Criminal Revision Application No.10/2022 which was dismissed vide judgment dated 18.09.2023. The Petitioner is claiming discharge from offence under Section 420 read with 34 of IPC.

5. Learned Counsel for the Petitioner submits that without controverting

the allegations in the FIR, statements of the witnesses, the documents of Sub-Registrar about the registration of sale deed, no offence is made out under Section 420 of IPC. It is submitted that only role attributed to the Petitioner is that he represented the Informant that Accused No.1 – Digambar was the owner and acted as a witness before Sub-Registrar, while registering sale deed. It is submitted that neither the Petitioner is benefited by any unlawful gain, nor he has personally caused loss to the Informant. It is the Accused No.1 – Digambar who is the real perpetrator. It is submitted that no material is collected during investigation to show that Petitioner was acting in collusion with main perpetrator and he had knowledge that land Gut No.141/2/2B measuring 0.73 H was fictitious. It is submitted that Accused No.1 prepared bogus 7/12 extract of the land to be sold when in fact he was joint owner. It is submitted that Informant and Accused No.1 were knowing each other and Informant was expected to have conducted due inquiry of title of Accused No.1. Lastly it is submitted that as the Petitioner is discharged from offences under Sections 465, 468, 471 read with 34 of IPC, no prosecution would lie for offence under Section 420 read with 34 of IPC against the Petitioner.

6. Learned APP Mr. K.K. Naik supports both the impugned orders. He would submit that there is cogent material on record in the form of statements of Sanjay, Rahul, Sandeep to indicate incriminating role of the Petitioner for offence under Section 420 of IPC. It is submitted that Petitioner acted in collusion with co-accused in inducing Informant to part with amount of consideration. There is material on record to proceed with the trial against the Petitioner for offence under Section 420.

7. I have considered rival submissions of the parties. I have also gone through papers of investigation placed on record by the Respondent.

Petitioner has already been discharged from offences under Sections 465, 468, 471 read with 34 of IPC. Only offence pitted against him is under Section 420 of IPC.

8. Accused No.1 – Digambar and his brother – Madhav are owner of land Gut No.141/2/2 measuring 1.45 H situated at Bhade. The land is having charge of cooperative society and bank. Informant was shown 7/12 extract of Gut No.141/2/2B measuring 0.73 H to represent salable title of Accused No.1. F.I.R. as well as material collected during the investigation do not show that Petitioner played any role in preparing false 7/12 extract showing exclusive name of Accused No.1 – Digambar. Neither there is any material to show that Petitioner was aware of the fact that Accused No.1 is not exclusive owner of land which was sold to the Informant. In fact Accused No.1 was introduced to the Informant by relative of the Informant - Magan Narsai Patil. Informant could have ascertained title from the said relative.

9. F.I.R. and statements of witnesses – Rahul, Sanjay and Sangeeta disclose that the transaction took place in the presence of the Petitioner and sale deed was executed on 15.05.2012. Thereafter in the year 2016, it revealed that there was no land which was purported to be sold and bogus record was prepared. There is no material on record to show that the amount of consideration or part of it was ever received by the Petitioner. There is no material to show wrongful gain to the Petitioner. The Petitioner is not a witnessed to the sale deed. He is attesting witness for the registration of the sale deed. The material on record against the Petitioner is not sufficient to try him for offence under Section 420 read with 34 of IPC.

10. It cannot be overlooked that already he is discharged from offences under Sections 465, 468, 471 read with 34 of IPC. It is the Accused No.1 – Digambar to be proceeded with for those offences. There is no relationship of the Petitioner with the Accused No.1. There is no reason to infer that despite knowledge of the title of the land, dishonestly Petitioner induced Informant to believe salable title for Accused no.1. I find that both the Courts below have committed error of jurisdiction in refusing to discharge Petitioner for offence under Section 420 of IPC. It would be abuse of process of law to frame charge against the Petitioner for the said offence.

11. The Revisional Court has committed gross error in observing that Petitioner was knowing every fact since beginning and was bound to disclose them to the Informant. I, therefore, pass following order :

ORDER

(i) Order dated 27.07.2022 below Exhibit-15 passed by the Judicial Magistrate First Class in R.C.C. No.158/2018 to the extent of Petitioner and judgment and order dated 18.09.2023 passed by the Additional Sessions Judge, Shahada in Criminal Revision No.10/2022 are quashed and set aside.

(ii) Application Exhibit-15 to the extent of present Petitioner stands allowed.

(iii) Rule is made absolute in above terms.

**SHAILESH P. BRAHME
JUDGE**

Refused...