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908- WP-1846-2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CRIMINAL WRIT PETITION NO. 1846 OF 2024

Girish Kamalakar Rao Maindarkar And Another.

VERSUS

The State Of Maharashtra And Another.

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Mr. Jayant R. Patil, Advocate for the Petitioners.

Smt. A. S. Deshmukh, APP for Respondent-State.

Mr. Abhay Ostwal, Advocate for Respondent No.2 (through V.C.).

CORAM : KISHORE C. SANT, J.

DATE : 14th AUGUST 2025.

PC :-

1. Heard Mr. Patil, the learned Advocate for the petitioners, Smt. Deshmukh, the learned APP for Respondent-State and Mr. Ostwal, the learned Advocate for Respondent No.2. The matter is heard final at the stage of admission with the with the consent of the parties.

2. In the present case, the respondent No.2 filed a private complaint in the Court of learned Judicial Magistrate First Class, AUSA, Dist. Latur, bearing R.C.C. No. 170 of 2019. It is alleged in the said complaint that

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the respondent No.2 happens to be the owner of the land survey No. 182/B, admeasuring 4H 39R. The said land was converted into non-agricultural land, and now, there are plots demarcated on it. It is alleged that the accused No.1 and 2 i.e. present petitioners sold half portion of southern side plot to the father of respondent No.2 on 29th August 1997 bearing plot No.43. Thereafter, the accused persons sold half portion land from north side of the said plot to one Nabisaheb Maniyar in 1999. It is alleged that thereafter again the accused sold the said northern half portion of plot to one Shivaji Narsoba Kathare by executing sale-deed dated 22nd December 2000. Shivaji Kathare sold his plot to one Mangal Jadhav in 2009. Thereafter Mangal Jadhav again sold the said plot to Dr. Ajay Maindarkar i.e. Petitioner No.2 on 18th November 2018. It is mainly alleged that the said plot thereafter is re-purchased by the petitioners.

3. It is alleged that when Mr. Maniyari was the owner of said land, the plots were sold to Mr. Kathare when the accused No. 1 and 2 were not the owners of the land and with knowledge of the said fact, those are sold. Thus the owner of southern side of the plot filed the a

complaint.

4. The learned JMFC, AUSA, on receipt of the complaint issued process by order dated 19th October 2022. The said order came to be challenged by way of revision petition in the Court of learned Sessions Judge, Latur. Vide order dated 4th July 2024, the learned Additional Sessions Judge, Latur, rejected the revision petition and thus the petitioners are before this Court.

5. Mr. Patil, the learned Advocate for the Petitioners vehemently submits that the person who filed a complaint i.e. respondent No.2 has no concern with the northern side of plot No.43. His complaint is, therefore, without *locus standi*. The order of issuance of process was thus totally illegal and the said is confirmed by the learned Sessions Court only observing that it is admitted by the petitioner that the said land was sold inadvertently.

6. In support of his submissions, the learned Advocate for the petitioner relied upon the judgments in the cases of (i) ***Pankaj s/o.***

*Smbhaji Kate Vs. State of Maharashtra*¹; (ii) *Mohammed Ibrahim and Ors. Vs. State of Bihar and Anr.*²;

7. The learned Advocate Mr. Ostwal vehemently opposed the petition. He submits that in the present case, an offence is clearly made out. The petitioners in spite of having knowledge that they are not the owner of the land, sold the northern portion of plot No.43. The learned Magistrate issued a process after satisfying himself about existence of *prima facie* case. It is only the purchaser who can lodge the complaint. No fault can be found in the order of issuance of process. The learned Sessions Judge has rightly rejected the revision application. He thus prays for rejection of the writ petition.

8. Learned APP also submits that when the offence is clearly made out, the writ petition deserves to be dismissed.

9. This Court has heard the parties. About the facts, there is no dispute amongst the parties. The only thing needs to be seen is as to

¹ [2025 (1) Mh.L.J. (Cri.) 645]

² (2009) 8 SCC 751

whether there was a cause of action to the Respondent No.2 to file a complaint. In the case of ***Mohammed Ibrahim and Ors.*** (supra), the Hon'ble Apex Court has held that in such cases, the dispute is essentially of a civil nature. Criminal Courts should ensure that the criminal proceedings are not misused for settling scores or pressurising the parties to settle civil disputes. Further, in similar facts, it was held that in such cases, the offence can be lodged for cheating, however, it is at the instance of the person who has purchased the said property. In such cases, it is the seller who defrauds the purchaser, and thus the purchaser is entitled to prosecute the seller under Section 415 of the Indian Penal Code, 1860. Paragraph Nos. 17, 22 and 23 of the said judgment reads as under.

“17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

A clarification

23. *When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.”*

10. In the case of Pankaj Kate (supra), the Division Bench of this Court, in similar set of facts, held that it is the purchaser at whose instance a complaint can be filed, as the person who is cheated is the purchaser and not the owner. This Court has also relied upon the judgment in the case of Mohd. Ibrahim and Ors (supra)-.

11. Thus this Court finds that no ingredients of the offences are made out. The order issuance of process is illegal. Consequently, the order passed by the learned Sessions Judge also deserves to be set aside. Hence, the following order:

ORDER

(i) Criminal Writ Petition stands allowed.

(ii) The impugned order dated 4th July 2024 passed by the learned Additional Sessions Judge, Latur in Criminal Revision Application No. 75 of 2022 and the order dated 19th October 2022 passed by learned JMFC, Ausa in R.C.C. No. 170 of 2019 thereby issuing process against the petitioners for the offences punishable under Sections 420, 465, 467, 471, 472 read with 34 of the Indian Penal Code, are quashed and set aside.

(iii) With this, writ petition stands allowed and disposed off.

[KISHORE C. SANT, J.]