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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 90 OF 2023

1. Shri Shaukat Mohammad Rahman,
son of late Aziaur Mohammad Rahman
aged 71 years, occupation Retired,
residing at Bungalow No.1,
Opp. SBI Branch, Chowkidingee,
Milan Nagar, Ratanpur,
Post Office Dibrugarh, Assam, 786003

2. Smt. Lucille Rahman,
wife of Shaukat Mohammad Rahman
aged 72 years, occupation Housewife,
residing at Bungalow No.1,
Opp. SBI Branch, Chowkidingee,
Milan Nagar, Ratanpur,
Post Office Dibrugarh,
Assam, 786003

... Petitioners

Versus

1. State of Goa
Through Police Inspector &
Police Station Incharge,
Porvorim Police Station,
Porvorim, Bardez, Goa 403 501

2. The Superintendent of Police,
Having his office at 2nd Floor,
Porvorim Police Station Bldg.,
Porvorim Bardez, Goa 403 501

3. Mr. Yashpal Raikar,
son of Anant Raikar
aged 47 years, occupation Business,
Residing at House No.628,
KTC Depot Road, Alto Porvorim,
Bardez, Goa, Pin 403 521

...Respondents

Mr. S.N. Joshi with Ms. Swapna Joshi and Ms. Sneha Naik, Advocates *for the Petitioners.*

Mr. Somnath Karpe, Additional Public Prosecutor *for Respondents 1 and 2.*

Mr. Shivan Desai with Ms. Riya Amonkar, Advocate *for Respondent 3.*

**CORAM: ALOK ARADHE, CJ. &
 M. S. SONAK, J.**

DATE: 13th March, 2025

JUDGMENT (Per M.S. Sonak, J.)

1. Heard learned Counsel for the parties.
2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.
3. The Petitioners, by instituting this petition under Article 226 of the Constitution of India r/w Section 482 of Cr.P.C., seek quashing of the order dated 24.03.2023 made by the J.M.F.C. Mapusa and the impugned FIR registered by the Porvorim Police Station under such order.
4. The Petitioners are senior citizens [over 70 years of age] residing in Dibrugarh, Assam. In the first paragraph of this petition, they have pleaded about the multiple health issues that afflict them.

5. The Petitioners have pleaded that the second Petitioner and her sister Maria Viegas are the co-owners of an ancestral property measuring 2850 sq. mts surveyed under No. 429/10 in the Village of Anjuna, North Goa, hereinafter referred to as the “said property.”

6. The Petitioners have pleaded that the 3rd Respondent [Complainant] is a property broker and real estate developer who offered to purchase the said property on an “as is where is basis”.

7. Apart from several phone calls and discussions, the 3rd Respondent (Complainant) addressed an undated communication [Exhibit P at page 23A] to the Petitioners offering to purchase the said property on “*as is where is basis along with the claim of the tenant and legal proceedings*”.

8. The complainant’s undated written offer is transcribed below for the convenience of reference:

“Dearest Madame /Sir,

This is in Reference to your Land at Anjuna bearing sy no 429/10 admeasuring 2850 sqm which is jointly Successes and owned by Your sister Bernadette and You , there also exist Mr Morajkar Family as Tenants

I had also Visited Mrs Bernadette at her residence at Miramar and happened to meet her Husband Mr Viegas , he told me that Bernadette was out of station and he would discuss my proposal with her when she

gets back . Thereafter I tried to call him several times on his mobile but was not responding.

My Discussion with Mr Viegas was about the land at Anjuna and that I am willing to buy it as it where is basis along with the claim of the tenant and legal proceedings.

If you feel interested I am willing to discuss the proposal further and accordingly pls feel free to contact me on 8805657777 and my email goodwillgroupgoa@gmail.com.

Thanking you

sd/-

YashpalRaikar”

9. The Petitioners have pleaded in paragraph 8 that they were tired of litigating with Kanta Morajkar and, therefore, they allowed themselves to be persuaded to sign the Memorandum of Understanding (MOU) dated 20.02.2020 prepared by the Complainant [Exhibit P-1 at pages 24 to 40]. Besides, the Petitioners also executed a Power of Attorney [Exhibit P-2 at pages 41 to 47], constituting the Complainant as their Attorney to deal with matters concerning the said property and the litigations relating to the said property.

10. In May 2023, following the complaint lodged by the Complainant, Porvorim Police Station issued a notice under

Section 41A of the Cr.P.C. requiring the Petitioners to report to the Porvorim Police Station on 15.05.2023. This was followed by another notice dated 29.05.2023, instructing the Petitioners to appear at the Porvorim Police Station on 10.06.2023.

11. The Petitioners have pleaded that it was impossible for them to attend the inquiry because of their age, health complications and the distance between Assam and Goa. However, the Petitioners managed to contact an Advocate to make enquiries. From the Advocate, they learnt that the Complainant had filed proceedings under Section 156(3) of Cr.P.C. i.e. Cr.M.A. No. 34/2023/E in the Court of J.M.F.C., Mapusa, for registration of an FIR against the Petitioners for allegedly cheating the Complainant and committing an offence punishable under Section 420 of IPC.

12. The Petitioners obtained a copy of the learned J.M.F.C's order dated 24.03.2023 under Section 156(3) and instituted this petition to quash it and the impugned FIR registered by the Porvorim Police Station based on it.

13. Mr. S.N. Joshi, learned Counsel for the Petitioners, submitted that the Complainant abused the judicial process by converting a civil dispute into a criminal case. He submitted that none of the

ingredients of Section 415 of the IPC were made out by the Complainant, and the lodging of proceedings under Section 156(3) Cr.P.C. and the impugned FIR was nothing but an attempt to blackmail or exert pressure upon the Petitioners by giving a civil dispute a criminal profile.

14. Mr. Joshi submitted that it was the complainant who approached the Petitioners with an offer to not only purchase the said property on an “as is where is basis”, but also take over all the litigations with Kanta Morajkar. He submitted that the value of the said property in the beachside village of Anjuna was a minimum of Rs.20,000/- per square metre in February 2020. However, the Complainant offered to purchase the same at a fraction of the market price [Rs. 1580/- per sq.metre.] on an “as is where is basis” only because he had full knowledge of the litigation with Kanta Morajkar.

15. Mr. Joshi submitted that the Complainant prepared the MOU, and the Petitioners executed it when they came down to Goa for a family wedding. He pointed out that the Complainant did not even deny the clear averments in the petition to this effect, though an affidavit in reply was filed in this petition.

16. Mr. Joshi submitted that the entire matter has a predominantly civil profile. With malafide intentions and ulterior purposes, the Complainant had given the matter a criminal profile only to pressurise or blackmail the Petitioners and abuse the judicial process. He relied on several decisions, some of which will be discussed during this judgment and order.

17. Mr. Karpe learned APP submitted that upon receipt of the complaint, the Police refused to register the FIR because they were convinced this was purely a civil dispute with no criminal profile. However, given the J.M.F.Cs. Order dated 24.03.2023, the Police had no option but to register the impugned FIR. Therefore, quite reasonably, he left the matter to the Court to determine by pointing out that this was essentially a civil dispute between the Petitioners and the Complainant.

18. Mr. Shivan Desai learned Counsel for the complainant, submitted that the Petitioners suppressed the fact that there were not less than 10 proceedings, a few of which were proceedings that had already attained finality up to the level of the High Court on the issue of Kanta Morajkar's tenancy in the said property. He submitted that by suppressing all these Court orders, the

Petitioners induced the 3rd Respondent to enter into the MOU dated 20.02.2020 and part with a non-refundable amount of Rs.1,00,000/-. He submitted that it was the Petitioners' duty to have disclosed all these orders, and had such disclosures been made, the Complainant would never have entered into the MOU or agreed to pay Rs.1,00,000/- by way of a non-refundable deposit. He, therefore, submitted that the ingredients of cheating under Section 415 of the IPC were made out. He submitted that no case was made to quash the J.M.F.Cs. Order or the impugned FIR given the limited interference parameters under Article 226 of the Constitution or Section 482 of Cr.P.C.

19. Mr. Shivan Desai submitted that even the J.M.F.C. has recorded *prima facie* findings that the complaint disclosed the ingredients of an offence punishable under Section 420 of IPC. He stressed upon paragraphs 19 to 22 of the J.M.F.Cs. Order dated 24.03.2023, which records that the Petitioners, through misrepresentation, induced the Complainant to enter into MOU dated 20.02.2020 and part with an amount of Rs.1,00,000/- to the Petitioners. Mr. Shivan Desai also produced on record the complaint dated 21.10.2022 to the Porvorim Police Station. The

same was accepted on record. Mr. Shivan Desai relied upon several decisions that will be considered during this judgment and order.

20. The rival contentions now fall for determination.

21. As noted at the very outset, the Petitioners are senior citizens afflicted with multiple health ailments who reside in Dibrugarh, Assam. The Complainant is a property broker and developer based in Goa.

22. There is no dispute that it was the Complainant who approached the Petitioners with a proposal to purchase the said property on “*as is where is basis along with the claim of the tenant and legal proceedings*”. This proposal categorically records the Complainant’s awareness of Mr Morajkar and his family members’ tenancy claims. In fact, this written proposal notes “*there also exists Mr Morajkar family as tenants*”.

23. After this, the record shows that the MOU dated 20.02.2020 was entered into between the Petitioners and the Complainant. In paragraph 8 of the petition, the Petitioners pleaded that the Complainant prepared the MOU and that they were persuaded to sign it when they came down to Goa to attend a family wedding.

The Complainant, who has filed an affidavit in this matter, has not denied these pleadings.

24. Apart from the fact that the Complainant's offer to purchase the said property was on an "as is where is basis", the MOU dated 20.02.2020 clearly and categorically records the litigations with Kanta Morajkar and how the Complainant was to pursue such litigation on behalf of the Petitioners at his own cost by engaging Advocates and taking all steps "*to recover and take the possession of the said property*".

25. The MOU states that the Petitioners were to cooperate with the Complainant by signing necessary documents, Vakalatnama, pleadings, affidavits, etc., concerning the said property in the Court of Law "*for purpose of making clear title*" and to take all appropriate legal measures against Kanta Narayan Morajkar and his family members as per the terms of the MOU. The MOU records that the Complainant would bear all litigation costs, and even if the Complainant fails to evict Mr Kanta Morajkar, the Complainant "*agrees and undertakes not to make any claim on the monies from the vendors that may have been incurred and/or spent by the purchaser in respect of the above said litigation.*"

26. Clause 7 of the MOU reads as follows:

“7. The purchaser hereby agrees that he shall make his all possible efforts to secure exclusive possession from the said Mr. Kanta Narayan Morajkar and his family members. And the Purchaser shall not claim or claim refund of any amount spent against such eventualities from the vendors.”

27. Despite the clear and categorical proposal emanating from the Complainant followed by clear and categorical recitals and clauses in the MOU, the Complainant lodged a complaint dated 21.10.2022 to the Police Inspector, Porvorim Police Station, alleging that the Petitioners did not inform him of the several court orders concerning the tenancy claims of Kanta Morajkar, and such suppression amounted to cheating the Complainant.

28. In paragraph 12 of the complaint, the Complainant stated that to work out an amicable settlement with the heirs of Kanta Morajkar, he had to arrange and meet them in several conferences/meetings through lawyers engaged by him and had to spend an amount of Rs.45,00,000/-. The Complainant claimed that after considering these monetary expenses he incurred, the Complainant would get only half of the said property for a total consideration of Rs.90,00,000/-. From this, the Complainant

concluded that he has already paid Rs.135,00,000/- and after all this, the Petitioners “*have dishonestly declined to execute a Deed of Sale*” of the said property and “*transfer the said property for the agreed consideration to this complainant*”. The complaint states that the Petitioners have “*also provoked their said sister and her husband to resile from the said MOU*”.

29. The record shows that the Porvorim Police Station declined to register the complaint as an FIR by observing that this was only a civil dispute involving no criminal element. Undeterred, the Complainant filed Cr.M.A No.34/2023/E before the J.M.F.C., Mapusa, invoking Section 156(3) Cr.P.C. and seeking directions for registration of the FIR.

30. By the impugned order dated 24.03.2023, the learned J.M.F.C. directed the Porvorim Police to investigate the complaint dated 21.10.2022 following the law and as expeditiously as possible. At para 19, the J.M.F.C. noted that the Petitioners were aware of Kanta Morajkar's status as the tenant, but they executed an MOU with the Complainant and induced him to pay Rs.1,00,000/-. The J.M.F.C. concluded that at least *prima facie*, there was *mens rea* to cheat the Complainant.

31. From the material on record and upon perusing the complaint dated 21.10.2022, we are satisfied that the ingredients of cheating as defined under Section 415 of IPC are not made out even after accepting the allegations in the complaint at their face value. The complaint and the other uncontroverted material on record, mostly emanating from the Complainant, show this is purely a civil dispute with no criminal profile. Still, the Complainant has attempted to convert a civil matter into a criminal matter, perhaps to pressurise the aged Petitioners into coughing out some amounts or otherwise creating spokes for the Petitioners by embroiling the Petitioners and the said property in litigation.

32. From the bare reading of the complaint, it is evident that the Complainant is alleging a breach of the terms of the MOU. The complaint alleges that the Petitioners have dishonestly declined to execute the deed of sale and transfer the said property for the agreed-upon consideration to the Complainant. Significantly, though the complaint is drafted by an Advocate, there is no clear allegation that the Petitioners had any intention to cheat the Complainant from the inception or of making any promises with no intention of fulfilling them.

33. The distinction between a mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement, which may be judged by his subsequent conduct. However, even the subsequent conduct is not the sole test for this. A mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, i.e. the time when the offence is said to have been committed. Therefore, the intention at the inception is the gist of the offence. To hold a person guilty of cheating, showing that he had fraudulent or dishonest intentions when making the promise, is necessary. From his failure to keep up his promise subsequently, such a culpable intention right at the beginning, i.e. when he made the promise cannot be presumed. (See ***Hridaya Ranjan Prasad Verma and Ors. vs. State of Bihar and Anr.***¹)

34. Reading the averments in the complaint in their entirety and even accepting the allegations as correct, the ingredients of intentional deception on the part of the Petitioners right at the beginning of the negotiations for the transaction has neither been

¹ (2000) 4 SCC 168

expressly pleaded nor indirectly suggested in the complaint. In this case, it was the Complainant who approached the Petitioners to purchase the said property on “*as is where is basis along with all the litigations with Kanta Morajkar*”.

35. The record also suggests that the Complainant prepared the MOU, and there was no question of any misrepresentation or suppression by the Petitioners. Instead, it appears that it was the Complainant who induced the Petitioners to execute the MOU for the sale of the said property on an “as is where is basis” subject to the litigations for a substantially reduced rate of Rs.1,580/- per sq. metre [when the market rate was in the range of Rs.20,000/- per sq. metre] after investing a token amount of Rs.1,00,000/- for purchase of the said property. The fact that the said property measures 2850 sq. metres and is in the beachside village of Anjuna cannot be overlooked.

36. The learned J.M.F.Cs. Order dated 24.03.2023, with respect, discloses complete non-application of mind to the aspect of the allegations in the complaint containing the ingredients of cheating as defined under Section 415 of IPC. In para 19, upon which considerable stress was laid on behalf of the Complainant, the

JMFC observed that the Petitioners were aware of the status of Kanta Morajkar as a tenant of the said property. Yet, they entered into MOU with the Complainant. According to the JMFC, this “*shows prima facie mens rea to cheat the Complainant*”. Such observations are perverse and show non-application of mind to the materials on record and the law on the subject.

37. The learned J.M.F.C. failed to note that even the Complainant knew about Kanta Morajkar and his claimed status. This was evident from the proposal submitted by the Complainant and the MOU’s clear and categorical recitals and clauses. Therefore, there was no question of any *mens rea* or cheating involved. The Complainant, a developer and a property broker, made a conscious decision to execute the MOU to purchase the said property along with the litigations affecting it. Only because of Kanta Morajkar’s tenancy claim, the litigations and the possession of the said property being with Morajkar did the Complainant offer a significantly reduced rate and paid only a token amount of Rs.100,000/- to the petitioners. These crucial aspects were not even addressed. The law about the criminal intent at the very inception or when the promise was initially made was also not applied.

38. The fact that the MOU does not enumerate the pending or concluded litigations or the various orders related to Kanta Morajkar's claims can hardly be characterised as misrepresentation or willful suppression. The context regarding the Petitioners being senior citizens residing in Assam and the Complainant being a property broker and developer from Goa, who initially approached the Petitioners to purchase the said property on an 'as is where is' basis, along with all the litigations affecting the said property, cannot be overlooked or downplayed in this matter. This is predominantly a civil dispute, though the Complainant has attempted to attribute to it a criminal profile for reasons that can hardly be regarded as bonafide.

39. The Hon'ble Supreme Court has repeatedly cautioned about converting purely civil disputes into criminal cases. The Hon'ble Supreme Court has held that any effort to settle civil disputes and claims which do not have any criminal offences by applying pressure through criminal prosecution should be deprecated and discouraged. (See ***Indian Oil Corpn. vs. NEPC India Ltd. and***

Ors.², and *Vijay Kumar Ghai and Ors. vs. State of West Bengal and Ors.*³.

40. In *Paramjeet Batra vs the State of Uttarakhand*⁴, the Hon'ble Supreme Court recognised that the inherent powers of a High Court under Section 482 of Cr.P.C. should be exercised sparingly. Yet, the High Court must not hesitate in quashing such criminal proceedings, which are essentially civil. The Court held that a complaint disclosing civil transactions may also have a criminal texture. However, the High Court must see whether a dispute of essentially a civil nature is given a cloak of a criminal offence. In such a situation, if a civil remedy is available, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of the process of the Court.

41. In *Paramjeet Batra* (supra), the Hon'ble Supreme Court referred to *Randheer Singh vs. State of U.P.*⁵ and observed that criminal proceedings could not be taken recourse to as a harassment weapon. In *Usha Chakraborty & Anr. vs. State*

² (2006) 6 SCC 736

³ (2022) 7 SCC 124

⁴ (2013) 11 SCC 673

⁵ (2021) 14 SCC 626

of West Bengal & Anr.⁶, it was again held that where a dispute, which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising inherent powers under Section 482. In **Sarabjit Kaur vs. State of Punjab and Anr.**⁷ and **Vesa Holdings (P) Ltd. vs. State of Kerala**⁸, the Hon'ble Supreme Court has held that a mere breach of contractual obligations would not give rise to an offence of cheating. It is required to be shown that the accused had fraudulent or dishonest intentions at the time of making the promise.

42. All these decisions were recently considered, reiterated, and followed in **Naresh Kumar & Anr. vs. The State of Karnataka & Anr.**⁹, for quashing criminal proceedings after finding that such proceedings had predominantly a civil flavour involving a mere breach of contract.

43. Mr Desai relied on **Kaptan Singh vs. State of Uttar Pradesh and Ors.**¹⁰, **Archana Rana vs. State of Uttar Pradesh and Anr.**¹¹, **Mahmood Ali and Ors. vs. State of**

⁶ 2023 SCC OnLine SC 90

⁷ (2023) 5 SCC 360

⁸ (2015) 8 SCC 293

⁹ 2024 INSC 196

¹⁰ (2021) 9 SCC 35

¹¹ (2021) 3 SCC 751

U.P. and Ors.¹², Abhishek vs. State of Madhya Pradesh¹³ and ***S.P. Gupta vs. Ashutosh Gupta¹⁴***. Most of these decisions are based on facts that are not comparable to those of the present case. But *Mahmood Ali [supra]* supports the petitioners' case by holding that it is the duty of the Court [with due care and circumspection] to consider the attendant circumstances rather than relying solely on the averments in the complaint.

44. *Kaptan Singh* (supra) was a case involving, inter alia, forced eviction with the assistance of the land mafia, forced execution of documents under threat of death, etc. Based upon such allegations and *prima facie* material in support of such allegations, the Hon'ble Supreme Court held that proceedings should not have been quashed by exercising powers under Section 482 Cr.P.C.

45. In *Archana Rana* (supra), there were no clear allegations about the Complainant being induced to pay Rs.5,00,000/- to obtain a job. Therefore, the proceedings under Section 420 of the IPC were, in fact, quashed, though the prosecution was allowed to continue under Sections 323, 504 and 506 of the IPC. The Court

¹² 2023 SCC OnLine SC 950

¹³ (2023) 16 SCC 666

¹⁴ (2010) 6 SCC 562

held that a fraudulent or dishonest inducement is an essential ingredient of the offence under Section 415 of IPC. This does not help the Petitioners' case because there are neither any allegations nor any material to suggest fraudulent or dishonest inducement.

46. *Mahmood Ali* (supra) only reiterates the parameters laid down in ***State of Haryana vs. Bhajan Lal***¹⁵ for quashing of FIRs. This case also supports the Petitioners' case rather than the Complainant's defence. The Hon'ble Supreme Court has held that in a case where proceedings are alleged to have been instituted with malice or ulterior motives, the Court owes a duty to look into the FIR with care and a little more closely. This is because once the complainant decides to proceed against the accused with an ulterior motive, then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone to ascertain

¹⁵ AIR 1992 SC 604

whether the necessary ingredients to constitute the alleged offence are disclosed or not.

47. The Court held that in frivolous or vexatious proceedings, the Court must look into many other attending circumstances emerging from the case record over and above the averments and, if need be, with due care and circumspection, try to read in between the lines. The Court, while exercising its jurisdiction under Section 482 of Cr.P.C. or Article 226 of the Constitution, need not restrict itself only to the stage of a case but is empowered to consider the overall circumstances leading to the initiation/registration of the case as well as the materials collected during the investigation. All these observations help the Petitioners' case more than the Complainant's defence.

48. *Abhishek vs. State of Madhya Pradesh* (supra) was delivered in facts not at all comparable to the facts of the present case. Again, the principles in *Bhajan Lal* (supra) and *Mahmood Ali* (supra) have been reiterated. In *S.P. Gupta* (supra), the accused had allegedly given a positive assurance that the property in question was free from all encumbrances. However, later, it was found that encumbrances were affecting the property, and even disputes were

pending. In these circumstances, the Hon'ble Supreme Court held that a case for quashing was not made out and that at the very initiation of negotiations, the accused intended to misrepresent and cheat. The facts in the present case are entirely different.

49. For all the above reasons, we are satisfied that the allegations made in the FIR/complaint, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out any case against the Petitioners. The Complainant launched the criminal proceedings maliciously and with ulterior motives to exert pressure on the Petitioners. Even the Police were justified in not registering the FIR because this was essentially a civil dispute between the parties. The learned J.M.F.C. failed to apply its mind to the materials on record and the legal principles involved while making the impugned order dated 24.03.2023 and directed the registration of the FIR after further investigations.

50. Accordingly, the J.M.F.C's. impugned order dated 24.03.2023 and the impugned FIR registered based thereon are liable to be quashed and are hereby quashed and set aside. The rule

is made absolute in the above terms. There shall, however, be no order for costs.

M. S. SONAK, J.

CHIEF JUSTICE