

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 127 OF 2024

Mohammad Sufiyana Mohammad Yakub
& Ors.

...Applicants

Versus.

The State of Maharashtra & Anr.

...Respondents

Mr. Chetan S. Damre a/w Mr. Omkar S. Banbe, learned Advocates for the Applicants.

Ms. Poonam P. Bhosale, learned A.P.P for the State/Respondent.

Mr. Ashish S. Gabhale i/b Jay & Co., learned Advocate for Respondent No. 2.

CORAM : ASHWIN D. BHOBE, J.

DATE : 4th MARCH 2026.

P.C. :

1. Heard Mr. Chetan Damre, learned Advocate for the Applicants, Ms. Poonam Bhosale, learned A.P.P for the State/Respondent and Mr. Ashish Gabhale, learned Advocate for Respondent No. 2.

2. This Criminal Application is filed by the Applicants under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 482 of the Criminal Procedure Code, 1973), seeking to quash the First Information Report bearing No. 0042 of 2023 dated 16.02.2023 registered with Malegaon Chavani Police Station, District-Nashik Gramin, for offences punishable under Sections 420 & 120-B of the Indian Penal Code, 1860 ("impugned FIR").

3. Material facts relevant to the adjudication of this Criminal Application are that Respondent No. 2 (the original Complainant/Informant) owns the land bearing Gat No. 173/1/A, measuring 43.20 acres. The allegations state that on 12.05.2020, a Sale Deed was executed between Respondent No. 2 and Applicant Nos. 1 & 5 to 13. The agreed sale consideration of Rs. 2,89,67,000/-, payable for the sale transaction, was not paid by Applicant Nos. 1 & 5 to 13. Instead of full payment, Applicants Nos. 1 & 5 to 13 transferred Rs. 52,00,000/- to Respondent No. 2's account. Respondent No. 2 claims the remaining amount payable by Applicant Nos. 1 & 5 to 13 for the sale transaction. Applicant Nos. 2 and 4 are said to be witnesses to the Sale Deed dated 12.05.2020. Applicant No. 3 is said to hold a Power of Attorney.

4. Mr. Chetan Damre, learned Advocate for the Applicants, submits that the subject matter of the impugned FIR is a civil dispute. To clarify, he states that Respondent No. 2 has ascribed a criminal character to the civil dispute. He submits that Respondent No. 2 is already before the Civil Court through a Special Civil Suit No. 193/2022, seeking to cancel the Sale Deed dated 12.05.2022. He submits that the Civil Court has granted an injunction in favour of Respondent No. 2, thereby restraining the creation of third-party rights by Applicant Nos. 1 & 5 to 13 through an order dated 13.09.2023 in Special Civil Suit No. 193/2022 by the Civil Judge, Senior Division at Malegaon, District Nashik. He submits that, although the Sale Deed dated 12.05.2022 was executed, possession of the subject property was never handed over to Applicant Nos. 1 & 5 to 13. He submits that the complaint does not reveal any dishonest intention or any elements of Section 420 or Section 120-

B of the IPC.

5. Mr. Ashish Gabhale, learned Advocate for Respondent No. 2, submits that the Applicants are involved in fabricating documents. He, however, fairly admits that Respondent No. 2 has filed Special Civil Suit No. 193/2022 against the Applicants, seeking cancellation of the Sale Deed, which is the subject of the impugned FIR, and that the case is pending before the Civil Judge, Senior Division, at Malegaon, District Nashik. He states that in the said Civil Suit, Respondent No. 2 is protected by an injunction. He further states that Respondent No. 2 is in possession of the entire suit property. He submits that Applicant Nos. 1 & 5 to 13, although they agreed to purchase the suit property for a total consideration of Rs. 2,89,67,000/-, paid only Rs. 52,00,000/- to Respondent No. 2 at the time of executing the Sale Deed. He contends that the grievance of Respondent No. 2 in the impugned FIR is essentially against Applicant Nos. 1 & 5 to 13 for non-compliance with the said contractual obligation.

6. Ms Poonam Bhosale, learned A.P.P. for the State/Respondent, submits that the allegations in the FIR, although they indicate a contractual dispute, the Investigating Officer thought it fit to investigate the matter by registering the FIR.

7. Arguments heard, records perused with the assistance of learned Advocates of the parties.

8. The subject matter of the Impugned FIR involves a contractual dispute. Apparently, Respondent No. 2 and the Applicant Nos. 1 & 5 to 13 are in conflict over the non-payment of

the remaining consideration under the sale Deed dated 12.05.2022. Such a dispute can hardly constitute a criminal offence.

9. In the case of ***Vesa Holdings Private Limited and Another v/s. The State of Kerala and Others.***¹, the Hon'ble Supreme Court in Paragraph Nos. 12 and 13 has observed as under :-

“12. From the decision cited by the appellant, the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code, 1860 can be said to have been made out.

13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to

1 (2015) 8 SCC 293

continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings.”

10. In the case of ***Hridaya Ranjan Prasad Verma and Others v/s. The State of Bihar and Another***², the Hon’ble Supreme Court in Paragraph No. 15 has observed as under :-

“15. In determining the question it has to be kept in mind that the distinction between 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 but for this subsequent conduct is not the sole test. 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, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

11. In the present case, neither the complaint nor the impugned FIR shows that, from the beginning, Applicant Nos. 1 & 5 to 13 intended to cheat, which is a required element for an offence under Section 420 of the IPC. The allegations in the complaint and the impugned FIR, taken at face value, do not reveal the essential elements of cheating. As submitted by Mr. Ashish Gabhale, learned Advocate for Respondent No. 2, possession of the suit property was not transferred to Applicant Nos. 1 & 5 to 13, and it remained with Respondent No. 2. Admittedly, Respondent No. 2 is before the Civil

² (2000) 4 SCC 168

Court seeking cancellation of the Sale Deed, in which the Applicants are protected by an interim order. The rights arising from the Sale Deed will be determined in the said Civil Suit.

12. Applicant Nos. 2 and 4 are said to be witnesses to the Sale Deed dated 12.05.2020. Applicant No. 3 is claimed to hold a constituted Power of Attorney. There is no material on record to demonstrate any ingredients of the offence against Applicants Nos. 2 to 4.

13. Respondent No. 2 has used criminal law to settle personal scores related to a primarily civil dispute. Respondent No. 2 has pursued civil remedies to enforce contractual rights. Allowing criminal proceedings to continue against the Applicants would amount to an abuse of process and result in a miscarriage of justice.

14. This Criminal Application is therefore allowed in terms of prayer clause (a). Consequently, the impugned FIR bearing No. 0042 of 2023, dated 16.02.2023, registered with the Malegaon Chavani Police Station, District-Nashik Gramin, against the Applicants is quashed. Criminal proceedings arising out of the impugned FIR against the Applicants are closed.

15. Criminal Application No. 127 of 2024 is disposed of. No order as to costs.

[ASHWIN D. BHOBE, J.]