

(2024) 11 BOM CK 0015

Bombay High Court (Aurangabad Bench)

Case No: Criminal Application No.1836 Of 2023

Pankaj Sambhaji Kate

APPELLANT

Vs

State Of Maharashtra And
Another

RESPONDENT

Date of Decision: Nov. 28, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 173, 468, 468(1), 468(2)(c), 468(3), 473, 482
- Indian Penal Code, 1860 - Section 34, 415, 420, 463, 465, 467, 468, 471

Hon'ble Judges: Vibha Kankanwadi, J; R.W.Joshi, J

Bench: Division Bench

Advocate: Manoj D. Shinde, A.M. Phule, Ashwin V. Hon

Final Decision: Allowed

Judgement

R.W. Joshi, J

1. Present criminal application is filed under section 482 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as "Cr.P.C." for brevity), inter alia, praying to quash F.I.R. bearing Crime No.390/2022 registered with MIDC Police Station, Dist. Latur, for the offence punishable under sections 420, 465, 467, 468, 471 read with section 34 of the Indian Penal Code (Hereinafter referred to as "IPC" for brevity), and Regular Criminal Case No. 1824/2022 pending before the learned 3rd Judicial Magistrate, First Class, Latur, which is registered in pursuant to the charge-sheet bearing No. 376/2022 dated 23.11.2022 filed under section 173 of the Cr.P.C. upon completion of the investigation pursuant to the said F.I.R.

2. Respondent No.2 is the informant, who has lodged the FIR with respondent No.1. The grievance ventilated in the FIR is in respect of a immovable property being plot of

land bearing plot No.1 in Survey No.44/1A of village Khadgaon, Tahsil Latur, District Latur, which is now included within the limits of Municipal Council, Latur. The said plot is hereinafter referred to as "subject plot" for brevity.

3. Respondent No.2 has stated in the FIR that his mother late Jaishree Bhaskarrao Ritpure had purchased the subject plot from late Chanappa Tukappa Shette vide registered sale deed dated 25.05.1989. He states that the same plot is again purchased by the applicant from Malikarjun Chanappa Shette under sale deed dated 07.12.2010. The allegation in the FIR is that the order of non-agricultural assessment dated 27.08.1987 bearing No.NA/LTR/574/87 has been tampered for the purpose of sale deed dated 07.12.2010 executed in favour of the applicant. The allegation is that instead of survey No.45, survey No.44 is mentioned in the N.A. Order and instead of name of Mr. Kumar, the name of Malikarjun is mentioned therein. The informant states that by such fabrication of N.A. Order, the property which was purchased by his mother and is now owned by him is sold by Malikarjun, accused No.2 to the applicant - accused no.1 for consideration of Rs.5,30,000/- vide sale deed dated 07.12.2010. The other two accused persons are witnesses to the sale deed dated 07.12.2010. Accused No.2 i.e. vendor of the applicant is son of the vendor of the mother of respondent No.2 – informant.

4. The FIR contains a statement that there is delay in lodging the report, since the matter pertaining to the subject plot was pending adjudication before the Civil Court from 2011 to 2015.

5. Before coming to the merits of the matter, in order to complete narration of facts it may be stated here that a suit, being Regular Civil Suit No.176/2011, was filed by Jaishree Bhaskarrao Ritpure, deceased mother of the informant along with her three sons namely Kunal, Kapil (informant) and Gaurav against the applicant (accused No.1) and accused No.2. The suit was filed for seeking perpetual injunction restraining the defendants therein i.e. accused Nos.1 and 2 from disturbing possession of the plaintiff over the subject plot.

6. The suit was filed on 23.03.2011 and was dismissed vide judgment and decree dated 27.02.2013. Appeal preferred by the plaintiff including the informant being Regular Civil Appeal No.77/2013 came to be allowed vide judgment and decree dated 16.01.2015 passed by the learned District Judge-2, Latur. The present applicant i.e. accused No.1 preferred a Second Appeal challenging the appellate decree dated 16.01.2015, in which the learned Single Judge of this Court was pleased to remand the matter before the learned trial Court, for fresh adjudication by directing to frame an issue with respect to identification of the subject plot. The judgment and decrees passed by the learned trial Court and the learned first appellate Court have been set aside in Second Appeal. The said Second Appeal is decided vide order dated 11.08.2022. It is informed by the parties that the Civil Suit is still pending. Apart from

this, there is also litigation between the parties with respect to mutation entries regarding subject plot.

7. In this backdrop, it may be noted that FIR has been lodged on 16.07.2022 i.e. approximately a month before 11.08.2022 i.e. the date on which Second Appeal came to be decided.

8. Based on the FIR, offence has been registered against the present applicant/accused No.1, who is purchaser, his vendor accused No.2 and attesting witnesses to the sale deed, who are arrayed as accused Nos.3 and 4.

9. Mr.M.D. Shinde, learned counsel for the applicant submits that the applicant is invoking Section 482 of the Cr.P.C., on the grounds that the dispute between the parties is purely a civil dispute and none of the provisions under which the offence is registered are attracted in the facts of the case warranting quashing of the FIR and criminal case initiated pursuant to the said FIR.

10. Per contra, Mr.A.M. Phule, learned APP appearing for respondent no.1 and Mr.Ashwini Hon, learned counsel for respondent No.2 contend that the order of non-agricultural assessment has been tampered for the purpose of execution and registration of the sale deed dated 07.12.2010 executed by accused No.2 in favour of the present applicant/accused No.1. They contend that fabrication of document for the purpose of cheating respondent No.2-informant is made and as such, all the provisions under which the offence is registered relating to fabrication of documents and cheating are attracted in this case. They further state that merely because the dispute between the parties has a civil dimension, criminal proceeding cannot be quashed, in as much as, a person, who has committed criminal offence cannot be exonerated merely on the ground that civil remedy can also be invoked.

11. We have heard learned counsel appearing for the respective parties, perused the FIR and charge-sheet and documents filed by the prosecution along with the charge-sheet. We have also perused the judgments delivered by the learned Courts in civil proceeding relating to the subject plot.

12. The principal contention of the respondents is that the order of non-agricultural assessment is fabricated. The fabrication of the said document is for the purpose of depriving respondent No.2 and his brothers of the immovable property. They contend that offence of forgery is committed by the accused persons by making a false document for the purpose of cheating and as such all the provisions under which the offence is registered are squarely applicable in the present case.

13. We propose to initially deal with Section 420 of the IPC. Section 420 of IPC which prescribes punishment for the offence of cheating, when a person is deceived to deliver any property to any other person. The essential ingredients of cheating are

prescribed under section 415 of the IPC. Relevant portion of section 415 provides that whoever by deceiving any person, fraudulently or dishonestly induces the persons so deceived to deliver any property to any person or to consent that any person shall retain any property commits offence of cheating. We are not dealing with other aspects of section 415 of IPC, since they do not relate to parting of property, and therefore, may not be relevant in the facts of the present case. What is essential is that there should be an act of deception coupled with fraudulent or dishonest inducement, the person deceiving must part with the property or consent that any person retaining the property. Both these aspects are not attracted. The allegation of the informant is not that he has sold the property to the applicant as a consequence of deception or fraudulent or dishonest inducement. Rather the allegation is that accused No.2 has sold the property to accused No.1 – applicant, thereby affecting his rights over the property. We are afraid that the allegations made in the FIR that property of the applicant and his family members is sold by accused No.2 to accused No.1 even if assumed to be true and correct, will not attract the ingredients of sections 415 and 420 of the IPC. When a person sells a property not belonging to him, the actual or real owner of the property cannot claim that offence of cheating has been committed qua him. In such situation, where a person sells property without having any title over it, it is the purchaser, who may claim that he has been cheated and accordingly may initiate the prosecution against the vendor under section 420 of the IPC. The person, who claims to be owner of the property, cannot invoke section 420 of the IPC against the vendor or purchaser of the property on the ground that the sale transaction is entered into without any title. Therefore, we have no hesitation in holding that section 420 of the IPC cannot be invoked by respondent No.2 – informant and registration of offence under the said provision is completely unwarranted and illegal.

14. The view that we have taken above is supported by judgment of the Hon'ble Supreme Court of India in the matter of **Mohammad Ibrahim and others Vs. State of Bihar and another** reported in **(2009) 8 SCC 751**. In the said judgment, the allegations were that accused No.1, who had no concern with an immovable property had sold it to accused No.2. Accused Nos.3, 4 and 5 in the said case were witnesses, scribe and stamp vendor respectively. In these backdrop of facts, the application for discharge was filed, which was rejected and the matter then went upto the Hon'ble Supreme Court. The Hon'ble Supreme Court has summarized the legal position in respect to section 420 of the IPC in such transaction holding that in cases where a property sold by person without any title over the same, it is the purchaser who may invoke section 420 of the IPC in order to prosecute the vendor and not the person claiming to be real owner.

15. Since the offence of cheating is not attracted, section 468 of the IPC which provides for punishment for offence of forgery for the purpose of cheating will also not be attracted.

16. As regards offence of forgery, the same is defined under section 463 of the IPC. Section 463 of IPC provides that whoever makes any false document with an intent to cause damage or injury to the public or any person, or to support any claim or title, or to cause any person to part with any property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. Thus making of a false document is essential ingredient of the offence of forgery. "Making of a false document" is dealt with in section 464 of the IPC. Alteration of a document without lawful authority, dishonestly or fraudulently amounts to making of a false document. The order of non-agricultural assessment dated 04.09.1987 is alleged by the prosecution to be a forged document. It is alleged that it is forged by the accused persons. In this regard, we may refer to communication at pages 120 and 166 in the charge-sheet issued by API, MIDC, Police Station, in which reference is made to information gathered from the office of the Collector, wherein it is stated that order of non-agricultural assessment in case No.NAA/LTR-574/87 dated 04.09.1987 is available in the records of the Collector office in which Gut Number of the land is mentioned as Gat No.45 and order is issued in the name of Shri Channappa Tukappa Shete. It is further stated that copy of the order used by accused persons bearing No.NAA/LTR-574/87 dated 04.09.1987 is not available in the records. It will be pertinent to mention here that the learned District Judge-2, Latur has also recorded a finding in paragraphs 28 and 29 of its judgment dated 16.01.2015 delivered in Regular Civil Appeal No.77/2013 relating to the subject plot that the order of non-agricultural assessment which is a part of the sale deed dated 07.12.2010 executed by accused No.2 in favour of accused No.1/applicant is tampered document.

17. However, there is absolutely no material on record to remotely suggest that the applicant/purchaser has tampered the document or was involved with the alleged act in any manner. The applicant has parted with the consideration for purchasing the subject property. It is not alleged by the informant that the sale is under valued. In the absence of any material to attribute the alleged wrong to the applicant, it will not be appropriate to make him face prosecution particularly when civil proceeding with respect to the subject property is pending adjudication before the competent Court.

18. However, the order of non-agricultural assessment is annexed to the sale deed dated 07.12.2010 executed in favour of applicant-accused No.1. It also finds a mention in the body of the sale deed. Using a forged document as a genuine is an offence punishable under section 471 of IPC. The offence under section 471 is a cognizable offence. However, the punishment prescribed for the said offence is the same as is prescribed for the offence of forgery. The offence of forgery is punishable with two years as per section 465 of the IPC and as such, the offence for using a forged document in present case will also be punishable with sentence which may exceed to two years. Section 468 of the Cr.P.C. provides for limitation for different category of

offences. Section 468(1) states that except or otherwise provided no Court shall take cognizance of offence after the expiry of period of limitation. The provision is couched in negative terms, which implies that it is mandatory in nature. Section 468(2)(c) provides that for an offence punishable with imprisonment for a term exceeding one year but not exceeding three years, the limitation will be of three years. No Court can take cognizance of a such offence after period of three years. Respondent No.2 has stated in the FIR that he did not file the FIR earlier since dispute with respect to the subject plot was pending before the Civil Court from the year 2011 to 2015. Perusal of the judgment in the civil litigation between the parties would demonstrate that the informant and his family members were aware about the alleged forgery committed with respect to the order of non-agricultural assessment. The FIR is lodged on 16.07.2022. It is clear that there is delay exceeding over a decade in lodging the FIR. The bar under section 468(1) of Cr.P.C. is clearly attracted. It is, therefore, obvious that the applicant cannot be prosecuted for the offence punishable under section 471 of IPC as well. We may note that Section 473 of the Code of Criminal Procedure provides for extension of period of limitation. The power can be exercised in cases, where delay is properly explained or it is felt by the Court, it is necessary to so to do in the interests of justice. As regards the explanation for delay, the informant-respondent No.2 has stated in the FIR that the FIR was not filed earlier since civil dispute was pending till the year 2015. As a matter of fact, Second Appeal arising out of the civil dispute between the parties was decided on 11.08.2022. FIR has been lodged on 16.07.2022 i.e. a month before. The matter is still pending before the learned trial Court since Second Appeal is decided by remanding matter back to the learned Trial Court to frame a issue on identification of property and decide the suit a fresh. There is no explanation whatsoever for delay of seven years from 2015 till 2022. Moreover, the statement that the civil dispute was pending only till 2015 is also incorrect and contrary to record. The delay has not been properly explained. We are also of the opinion that it is not necessary to extend the delay in the interest of justice. Rather allowing the criminal prosecution, which is initiated after a period of around 12 years to continue would amount to abuse of process of law, particularly when civil dispute between the parties is still pending for adjudication before the competent Civil Court. The provisions of Section 468(3) of Cr.P.C. will not be helpful to prosecution to overcome the point of limitation as the facts in the case do not attract Sections 420, 465, 467, 468 of the IPC which prescribe for severe punishments.

19. Apart from the aspect of limitation, we are of the considered opinion that lodging of a criminal complaint after period over a decade particularly when civil dispute with respect to the subject matter is pending between the parties would amount to abuse of process of law. We are of the opinion that the criminal prosecution cannot be allowed to be continued against the applicant having regard to the delay in lodging the FIR coupled with the fact that civil dispute is pending. We reiterate that taking cognizance

of the matter is statutorily barred by section 468 of the Cr.P..C.

20. We are of the opinion that the prosecution needs to be quashed against the applicant in the light of clauses (i), (iii), (iv) and (vii) of paragraph no.102 in the matter of State of Haryana Vs. Bhajanlal reported in 1992 Supp. (1) SCC 335/AIR 1992 S.C. 604.

21. In view of the aforesaid, we are therefore considered opinion that the prosecution of the applicant/accused cannot be allowed to continue and we deem it fit to quash the same. We, therefore, pass the following order :-

ORDER

(i) The application is allowed.

(ii) FIR bearing Crime No.390/2022 registered against applicant-Pankaj Sambhaji Kate with MIDC Police Station, Dist. Latur, for the offence punishable under sections 420, 465, 467, 468 and 471 read with section 34 of the Indian Penal Code and the Regular Criminal Case No.1824/2022 pending on the file of the learned 3rd Judicial Magistrate, First Class, Latur are hereby quashed.