
(2011) 07 BOM CK 0126

In the Bombay High Court

Case No : Criminal Application No. 3 of 2011

Avinash Vinayrao Chopde

APPELLANT

Vs

State of Maharashtra and Gulam Mustafa

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 415, 420

Citation : (2011) 07 BOM CK 0126

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : Mohta, for the Appellant; K.R. Deshpande and A.B. Mirza, for the Respondent

Final Decision : Allowed

Judgement

A.P. Bhangale, J.—Heard Mr. Mohta, Adv. for the applicant, Mrs.K.R. Deshpande, A.P.P. for respondent No. 1 and Mr. A.B. Mirza, Adv. for respondent No. 2.

2. ADMIT.

3. Mrs. K.R. Deshpande, A.P.P. waives service on behalf of respondent No. 1 and Mr. A.B. Mirza, Advocate waives service on behalf of respondent No. 2.

4. By this application u/s 482 of the Code of Criminal Procedure, the applicant has prayed for to quash the F.I.R. in Crime No. 188 of 2010 lodged at Police Station, Akot on the ground that the dispute which is sought to be raised by the complainant is purely of a civil nature in respect of the agreement to sell which was executed by the applicant in his capacity as a power of attorney on behalf of Syed Bari Syed Hasan along with Mohan Haribhau Pande. The complainant had entered into an agreement with the applicant and Mohan Haribhau Pande and accepted payment of earnest money in the sum of Rs. 10,000/-. The terms of agreement were mentioned in the agreement itself including the consequences for breach of agreement. It was mentioned that a suit may be filed in the

competent Court to get the sale deed executed and possession of the immovable property on the basis of alleged breach of said agreement dt. 17.6.2002. It is submitted that since the complainant could not have filed a Civil Suit due to bar of limitation, he had a novel idea of prosecuting the accused on the basis of false report lodged at Police Station, Akot, District Akola on 19.10.2010 which was registered as Crime No. 188 of 2010, u/s 420 r/w. Section 34 of the Indian Penal Code against the accused and Others on the ground that the accused had conspired to sell plots by accepting earnest money and rest of the sum by installments, but did not sell the plots, as agreed.

5. Section 415 of the Indian Penal Code which defines the offence of cheating requires essential mens rea (guilty mind). Section 415 reads thus:

415. Cheating. -

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he was not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation - A dishonest concealment of facts is a deception within the meaning of this section.

6. Essential ingredients must be averred in the complaint itself so as to spell out offence punishable u/s 420 of the Indian Penal Code. Looking to the document styled as "Stavar Malachi Isar Pavati", dt. 17.6.2002 which was entered into between the first informant Gulam Mustafa Gulam Murtuza on one hand and Avinash Chopde and Mohan Pande on the other hand as attorney on behalf of Syed Bari Syed Hasan and reading the agreement in all juxtaposition with averments made in the First Information Report, even assuming as they are, prima facie, do not constitute an offence of cheating as defined u/s 415 of the Indian Penal Code nor make out any case for commission of a cognizable offence punishable u/s 420 of the Indian Penal Code. It appears that the complainant had, out of frustration, thinking that his suit may be beyond limitation if filed, chose to lodge a report without any sufficient ground just to harass the applicant/accused. "Isar Pavati" itself indicates that Civil Suit could have been filed in consequence of breach of agreement even when the applicant had approached for grant of anticipatory bail. The learned Additional Sessions Judge, Akot, District Akola expressed his prima facie opinion in this regard while refusing custodial interrogation that there appears purely a dispute of civil nature.

7. Under these circumstances, when the allegations made prima facie do not constitute the offence of cheating, this is a fit case where the F.I.R should be quashed, as prayed by the present applicant. Hence, the F.I.R. in Crime No. 188 of 2010 lodged with Police Station Akot is, therefore, quashed.

8. In the facts and circumstances of the present case, the ruling cited by the learned Advocate for the respondent No. 2 in the case of Qayyum Ibrahim Mohammad and Ors. v. State of Maharashtra and Anr. reported in 2009 ALL MR (Cri) 120 is not applicable as the F.I.R. read in the light of Isar Pavati did not disclose commission of cognizable offence.

The Criminal Application is allowed accordingly.