

(2014) 04 BOM CK 0152

In the Bombay High Court

Case No : Criminal Writ Petition No. 130 and 163 of 2010

Mr. Govind Ramchandra Deshmukh

APPELLANT

Vs

Mr. Rambhau Bapurao Mate and Others
 Shripad Vs
The State of Maharashtra and Rambhau

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 202
Transfer of Property Act, 1882 — Section 52

Citation : (2014) ALLMR(Cri) 2123

Hon'ble Judges : A.I.S. Cheema, J

Bench : Single Bench

Advocate : P.R. Patil Advocate in Criminal Writ Petition No. 130 of 2010, Shri M.M. Gadkari Advocate for Petitioner in Criminal Writ Petition Nos. 163 and 164 of 2010 and Shri H.A. Patankar Advocate in Criminal Writ Petition No. 164 of 2010, Advocate for the Appellant; S.R. Palnitkar A.P.P. for Respondent No. 1 in Criminal Writ Petition No. 130 and 164 of 2010 and for Respondent No. 7 in Criminal Writ Petition No. 163 of 2010 and Shri U.R. Kulkarni Advocate for Respondent No. 2 in Criminal Writ Petition No. 130 and 164 of 2010 and for Respondent No. 1 in Criminal Writ Petition No. 163 of 2010, Shri V.N. Upadhye Advocate for Respondent Nos. 5 and 6 in Criminal Writ Petition No. 163 of 2010, Advocate for the Respondent

Judgement

A.I.S. Cheema, J.—Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the respective parties. Respondent Rambhau Bapurao Mate has filed Regular Criminal Case No. 166 of 2009 before the Judicial Magistrate, First Class, Kopargaon, Dist-Ahmednagar against in all 6 accused. Accused Nos. 4 to 6 have filed these Writ Petitions, to quash process issued against them.

2. Perused the Writ Petitions and documents filed in support, as well as affidavit in reply of the Respondent Rambhau Mate (hereinafter referred to as "complainant") and affidavit in rejoinder filed in the Petitions. These Petitions are being disposed of by Common Judgment, as arising from same Complaint and as

many of the facts are common, overlapping and documents being referred are also the same.

3. For the convenience of reference (unless mentioned otherwise), I am referring to the documents from record of Criminal Writ Petition No. 130 of 2010.

4. The case of Complainant Rambhau Mate is that he purchased certain lands at Bramhangaon, Tq-Kopargaon, some of which have been sold to him and his witnesses by Accused No. 1 Shri Shrihari Ramchandra Deshmukh and his wife Accused No. 2 Geeta Shrihari Deshmukh and some have been sold by Accused No. 5 Gauri Shripad Deshmukh through Power of Attorney Accused No. 4 Shri Shripad Ramchandra Deshmukh. Accused No. 3 Kanad Shrihari Deshmukh, son of Accused No. 1 Shrihari was witness. Accused No. 6 Govind subsequently filed Special Civil Suit No. 1293 of 2007, claiming partition from Accused Nos. 1, 2, 4 and 5 and registered a notice u/s 52 of Transfer of Properties Act with Registrar of Documents, in which Accused No. 4 Shripad Ramchandra Deshmukh was witness. Thus, the complainant claimed that the accused persons had cheated him in furtherance with common intention of each other.

5. The Judicial Magistrate, First Class earlier sent the complaint for enquiry u/s 202 of Code of Criminal Procedure, 1973 (for short "Cr.P.C.") and after receipt of report, directed investigation u/s 156(3) of Cr.P.C. The said order got challenged and in Criminal Revision No. 33 of 2008 by order dated 10th February 2009, the order directing investigation u/s 156(3) of Cr.P.C. was set aside and the Magistrate was directed to proceed under Chapter XVI and XVII of Cr.P.C. Magistrate, thereafter, recorded verification of the complainant Rambhau Mate and one Haribhau Balaji Kadam and on 24th August 2009, issued process against all the six accused. Hence, the present Writ Petitions.

6. I have heard learned counsel for respective Petitioners in the three Petitions and learned A.P.P. for the State and learned counsel for Complainant.

7. Learned counsel for Petitioner in Writ Petition No. 130 of 2010, referred to the contents of the complaint. Important accusations in the complaint need to be referred:-

? Accused Nos. 1 and 2 are husband and wife and Accused No. 3 is their son. Accused No. 6 is real brother of Accused Nos. 1 and 4. Accused No. 5 is the wife of Accused No. 4. The complainant and his witnesses wanted to purchase land at Bramhangaon Shivar. The Accused Nos. 1, 2 and 4 contacted them. Accused Nos. 1 and 4 wanted to sell their land as they were residing at Pune. Accused Nos. 1, 2, 4 and 5 agreed to sell the complainant and his witnesses lands which were in the name of Accused Nos. 2 and 5 as mentioned in the complaint, and on the date, time and place as mentioned in the complaint, Accused Nos. 1 to 5 in collusion sold the lands mentioned to the complainant and his witnesses. The complaint then makes reference to six sale deeds executed in favour of complainant Rambhau and others on 25th January, 2007 by Accused No. 1 Shrihari Deshmukh and Accused No. 2 Geeta Deshmukh. Those lands are having

Gut Nos. 317/1, 317/2, 317/3, 318, 331/3, 332 and 333. The complaint claims that Accused No. 5 Gauri Shripad Deshmukh had executed Power of Attorney in favour of Accused No. 4 Shripad Deshmukh and by six sale deeds, Shripad Deshmukh, as Power of Attorney of his wife, sold parts of land from Gut No. 317/4 to the complainant Rambhau Mate and his witnesses. It is mentioned that the Accused Nos. 1 to 5 made complainant Rambhau and his witnesses feel that Accused Nos. 1, 2, 4 and 5 had become owners of the lands concerned as per Will of mother Shantabai and thus they won the confidence of complainant Rambhau and his witnesses and in collusion with each other, induced the complainant and his witnesses to enter into the transactions and accordingly documents were got prepared. Accused No. 3 Kanad Shrihari Deshmukh, in order to help Accused Nos. 1 and 2, signed on documents as witness. It is further averred in the complaint that Accused No. 6 Govind Ramchandra Deshmukh colluded with Accused No. 4 Shripad Deshmukh and at Kopargaon, Office of Registrar of Documents, notice u/s 52 of Transfer of Properties Act was registered on 14th August 2007, in which Accused No. 4 Shripad was witness and thus complainant was cheated. Accused No. 6 Govind filed Special Civil Suit No. 1293 of 2007 in the Court of Civil Judge, Senior Division, Pune seeking partition from Accused Nos. 1, 2, 4 and 5. The complainant appeared in that case and has even filed written statement. Accused No. 6 Govind in that Suit, claimed that the properties concerned in sale deeds executed by Accused Nos. 1, 2, 4 and 5 are all joint family properties and in addition to Accused Nos. 1 and 4, Accused No. 6 has also share in the same. The complainant claimed that Accused Nos. 1 and 5 had suppressed this fact and cheated the complainant. Complainant claims that he has been forced to attend proceedings at Pune, putting him in expenditures. It is claimed that Accused Nos. 1 to 5 had, while executing the sale deeds, agreed that they will not let right of the complainant and his witnesses be affected but after transaction Accused Nos. 1 to 6 in collusion, filed Special Civil Suit No. 1293 of 2007 at Pune. Thus, the complaint.

8. The Writ Petitions refer to facts as to how in the family there was partition on 2nd January 1955 and Shantabai, the mother of Accused No. 1 Shrihari, Accused No. 4 Shripad and Accused No. 6 Govind, received Survey No. 115 to her share. It is claimed that the land was later on converted into Gut No. 317 and Shantabai later on divided Gut No. 317 into four parts, i.e. 317/1 to 317/4. The Petitions give details by the respective parties as to how the divided parts have come down.

9. In Writ Petition No. 130 of 2010 Petitioner-Accused No. 4 Shripad claims that he had filed Special Civil Suit No. 108 of 2007 before the Civil Judge, Senior Division, Pune for declaration of his share in residential property as well as 1/5th undivided share in Gut No. 317/1 and 317/2. This Suit was filed before the sale deeds executed in favour of complainant and his witnesses, which are dated 25th January, 2007 and 31st January, 2007. According to the Petitioner Shripad, Accused No. 4, the sale deed executed by him as Power of Attorney of his wife, Accused No. 5 Gauri, was not relating to Gut No. 317/1 and 317/2. Those sale

deeds relate to Gut No. 317/4, regarding which, according to this Petitioner, there is no litigation pending. Even Special Civil Suit No. 1293 of 2007 does not relate to Gut No. 317/4. Gut No. 317/4 is not involved in earlier Special Civil Suit No. 108 of 2007 or subsequent Special Civil Suit No. 1293 of 2007. Only by signing as a witness in notice u/s 52 of Transfer of Properties Act, registered by Accused No. 6, it cannot be claimed that the Petitioner Shripad colluded.

10. Gauri Deshmukh-Accused No. 5, who has filed Criminal Writ Petition No. 164 of 2010, has raised contentions that she has been made accused so as to harass her and force her husband Shripad to withdraw his Suit which was filed earlier to the transaction, relating to Gut Nos. 317/1 and 317/2. In the complaint, there is common, general statement made that Accused Nos. 1 to 5 stated to the complainant that they are owners and thus the transactions took place. There are two transactions. One dated 25th January, 2007 and another dated 31st January, 2007 and they took place separately and negotiations were different. It is claimed in Writ Petition No. 164 of 2010 by Accused No. 5 Gauri Deshmukh that the specific allegation of the complaint is that the complainant and his witnesses were cheated in view of filing of Special Civil Suit No. 1293 of 2007, but the Magistrate did not verify the contents of the said suit. It is pertinent to note that Gut Number sold by Accused No. 5 Gauri Deshmukh is Gut No. 317/4, which is no subject matter of that litigation and she is not party also to that litigation. Accused No. 5 is no way concerned with the other properties except Gut No. 317/4. Thus, according to the Accused No. 5 Gauri Deshmukh, she is not concerned and has been wrongly proceeded against.

11. Govind Ramchandra Deshmukh, Accused No. 6, who has filed Criminal Writ Petition No. 163 of 2010, claims that the complaint does not make any specific allegation against him to prosecute him. The only allegation against Accused No. 6 Govind Deshmukh is that he has filed Civil Suit against the complainant and others and he got the notice registered with the Sub Registrar. The Petition refers to the contents of the complaint to show that no case was made out against Accused No. 6. It is claimed that Magistrate should have seen that except some vague, general statements, there was nothing against Accused No. 6 to make him face the criminal prosecution. Accused No. 6 Govind Deshmukh was not party to any of the sale deed in favour of the complainant and his witnesses, nor he was made aware about execution of the same. The only allegation made against Accused No. 6 is that on 14th August 2007, he conspired with Accused No. 4 Shripad Deshmukh and got registered notice u/s 52 of Transfer of Properties Act. Conspiracy has been alleged only on such basis. Only because Accused No. 4 Shripad Deshmukh was witness in the notice, does not amount to commission of offence. It is not the case of the complainant that before execution of the sale deed, the complainant has taken consent of Accused No. 6 Govind Deshmukh or had issued any public notice. For such reasons, Accused No. 6 Govind Deshmukh has also claimed that the process issued against him, needs to be quashed.

12. Learned counsel for the three Petitioners vehemently argued on above grounds, to submit that the process issued against Accused Nos. 4 to 6 need to be quashed. According to them, there is absolutely no case against Accused No. 6 who was not party to any of the transactions and there is no case against Accused Nos. 4 and 5 as Gut No. 317/4, which was sold by Accused No. 5 Gauri Deshmukh through her husband Accused No. 4, is not involved in any of the litigations. It is claimed that just to pressurize, the present complaint has been filed, after passage of time.

13. Learned counsel for Petitioners relied on following reported cases:

- (1) Devendra and Others Vs. State of U.P. and Another, ,
- (2) Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, ,
- (3) Joseph Salvaraj A. Vs. State of Gujarat and Others, ,
- (4) Md. Ibrahim and Others Vs. State of Bihar and Another, ,
- (5) B. Suresh Yadav Vs. Sharifa Bee and Another, ,
- (6) V.Y. Jose and Another Vs. State of Gujarat and Another, ,
- (7) All Cargo Movers (I) Pvt. Ltd. and Others Vs. Dhanesh Badarmal Jain and Another, .

? Relying on the above Judgments, the argument is that it is necessary to show intention to cheat since very beginning when representation is made. When the dispute is purely of civil nature, letting criminal case to proceed, would be abuse of process. It is claimed that it is necessary to invoke inherent powers to quash the process issued.

14. On behalf of the Petitioners, reliance has been placed on the case of GHCL Employees Stock Option Trust Vs. India Infoline Ltd., , to argue that it is necessary that the Magistrate should be satisfied about prima facie case against each of the accused and the role played by them.

15. Learned counsel for Respondent No. 2 argued that the powers of writ jurisdiction and inherent powers should be sparingly used. According to him, in the complaint primary ingredients were spelt out showing that the complainant and his witnesses have been cheated. It has been argued that Accused Nos. 1 to 6, who are from the same family, have colluded and cheated the complainant, leading to litigation and at present stage where process has been issued, interference is not called for. The counsel submitted that the facts appearing from the record spell out that there is criminal offence made out.

16. In reply, counsel for Petitioners referred to the written statement dated 21st November 2007, filed by the complainant in Special Civil Suit No. 1293 of 2007, that the complainant was knowing all the facts and still has filed the complaint that he has been cheated.

17. The list of documents filed in the complaint (earlier registered as bearing Criminal Case No. 93 of 2008 and subsequently as Regular Criminal Case No. 166 of 2009) copy of which has been filed at Page No. 345 in Criminal Writ Petition No. 130 of 2010, shows that the complainant did not file copy of Special Civil Suit No. 1293 of 2007. The complaint filed, has tried to spell out cheating against all the accused persons, based on the fact that they have subsequently filed Special Civil Suit No. 1293 of 2007, for partition. If copy of that Suit is perused, the Accused No. 6, while seeking partition, in Para 1(c) has sought partition regarding Gut No. 317/1, 317/2 and 129/1. There are other agricultural and house properties involved, but Gut No. 317/4 is not subject matter of that Suit. The complainant kept back copy of plaint of Special Civil Suit No. 1293 of 2007 and in the complaint, after referring to the transactions on two dates of 25th January 2007 and 31st January 2007, referred to subsequent filing of Special Civil Suit No. 1293 of 2007 and in a vague manner, claimed that partition has been sought and thus he had been cheated. The complainant had already filed written statement in the said Suit in the year 2007 itself, which is before filing the complaint in the year 2008, but kept the complaint vague. The Judicial Magistrate did not seek for copy of the plaint of Special Civil Suit No. 1293 of 2007 on the basis of which cheating was being claimed. Thus, there was no sufficient material for his satisfaction. Had the Magistrate looked into the plaint of said Special Civil Suit, it could have been realized that Gut No. 317/4 sold by Accused No. 5 through power of Attorney Accused No. 4, did not figure in that concerned Suit. The complaint contains vague and general statements that Accused Nos. 1 to 5 colluded and offered to sell the field properties. Magistrate did not look into the copies of Sale Deed to see that Accused No. 6 Govind was no where connected.

18. There is substance in the argument of counsel for Accused No. 4 Shripad Deshmukh and Accused No. 6 Govind Deshmukh that merely because Accused No. 4 Shripad Deshmukh became witness in the subsequent notice registered u/s 52 of the Transfer of Properties Act, that does not mean that there has been collusion. The complaint is also silent with reference to the earlier Special Civil Suit No. 108 of 2007 filed by Accused No. 4 Shripad with reference to Gut No. 317/1 and 317/2.

19. It is rightly argued for the Petitioners that there are two different transactions on different dates but the complaint vaguely states that Accused Nos. 1, 2, 4 and 5 agreed to sell the field properties and have cheated the complainant. Complaint mentions that after the transactions, Accused Nos. 1 to 6 colluded and filed Special Civil Suit No. 1293 of 2007. Thus, as regards Accused No. 6 Govind Deshmukh, the collusion is alleged after the concerned sale deeds were executed. The complaint does not give any specific particulars of when, where and in presence of whom talk took place and vague statement is made that the accused persons, in collusion, offered to sell the land and the complainant was persuaded to purchase the same. In fact if the copies of sale deeds executed by Accused Nos. 1 and 2 are perused, in the title where name of

vendor is shown, it is mentioned as "Shri Shrihari Ramchandra Deshmukh as KARTA of joint family". The deeds do not appear to be even claiming that vendor is exclusive owner. If the contention of complainant was to be accepted that Accused Nos. 1 to 5 offered to sell the lands and if Shrihari Deshmukh was being shown as KARTA of joint family, an ordinary prudent person would have asked the other family members to be witness to the transactions or record their consent as consenting parties. It is claimed that Accused No. 3 Kanad Deshmukh, son of Accused Nos. 1 and 2 joined as witness. But there is nothing to show that Accused Nos. 4 to 6 were asked to join as witness or to give their consent. Thus, the allegation in the complaint on this count with reference to Accused Nos. 4 to 6 are absurd and it cannot be said there is sufficient ground to proceed against Accused Nos. 4 to 6.

20. There are no particulars showing when, where, how Accused Nos. 4 to 6 fraudulently or dishonestly induced Complainant or his witnesses to enter into sale deeds which are subject matter of Special Civil Suit No. 1293 of 2007. The Complaint or Verification statements do not appear to be making out case of cheating. Making vague or general statements is not enough.

21. In the matter of State of Haryana and others Vs. Ch. Bhajan Lal and others, , categories of cases were referred wherein this Court can step in to prevent abuse of process of Court. Category of cases Nos. 5 and 7 are as under:-

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

22. In the present matter, I have already observed that the allegations are absurd to spell out the case against Accused Nos. 4 to 6. The complaint appears to be intentionally vague and thus not bona fide when it tried to spell out case against Accused Nos. 4 to 6 without bringing forth relevant documents before the Judicial Magistrate.

23. For the above reasons, interference in the present matters is necessary to prevent abuse of process of law. The complainant who was defending himself in the civil litigation, after passage of time, decided to file the present complaint, claiming cheating and has put the criminal law in motion, which is not maintainable. There is no substance in the arguments submitted by counsel for Complainant. For the reasons stated above, I pass following order:-

ORDER

(A) Criminal Writ Petition No. 130 of 2010, Criminal Writ Petition No. 163 of 2010 and Criminal Writ Petition No. 164 of 2010, are hereby allowed.

(B) The impugned order dated 24th August, 2009 directing issuance of process against present Petitioners, passed by the Judicial Magistrate, First Class, Kopargaon in Regular Criminal Case No. 166 of 2009 (Rambhau Bapurao Mate vs. Shri Shrihari Ramchandra Deshmukh and others), is quashed and set aside as far as regards present Petitioners are concerned, i.e. Shripad Ramchandra Deshmukh, Govind Ramchandra Deshmukh and Gauri Shripad Deshmukh.

? Rule is made absolute on the terms indicated above.