

Ajay

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

WRIT PETITION NO. 952 OF 2015

M/s. Akansha Developers

.. Petitioner

Versus

State of Maharashtra and Ors.

.. Respondents

-
- Mr. S. R. Nargolkar a/w. Mr. S.S. Nargolkar, Advocates for Petitioner.
 - Mr. Sukanta A. Karmakar, APP for Respondent – State.
 - Mr. Rounak Naik, Advocate for Respondent No.2.
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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 22, 2026.

P.C.:

1. Heard Mr. Nargolkar, learned Advocate for Petitioner; Mr. Karmakar, learned APP for Respondent – State and Mr. Naik, learned Advocate for Respondent No.2

2. This Writ Petition is filed in the year 2015 seeking quashing of proceedings bearing RCC No.581 of 2012 filed by Respondent No.2 - original Complainant for offences punishable under Sections 120-B, 403, 404, 406, 420, 423, 426, 447, 504 readwith 34 of the Indian Penal Code, 1860 (for short '**IPC**'). Petition is filed by original Accused No.1 whereas original Accused Nos.2 and 3 are arraigned as Respondent Nos.3 and 4 herein. Complainant is Respondent No.2. Respondent No.1 is State.

3. Briefly stated, Respondent No.2 filed RCC No.581 of 2012 before the JMFC, Pune for alleged offences of cheating and breach of trust against the Petitioner and Respondent Nos.2 and 3 who are all relatives of each other. Complainant and Accused Nos.2 and 3 are relatives whereas Petitioner is a Developer. The dispute is between Complainant and Accused Nos.2 and 3. According to Complainant, ancestral property bearing survey numbers bearing CTS Nos.773, 774, 776 and 784 situated at Mouje Aundh, Taluka Haveli, District Pune belong to the Complainant as owner whereas out of which CTS Nos.784 was purchased by his grandfather by a registered sale deed dated 06.05.1955.

4. The development of the said property was entrusted to Petitioner by both the parties and by virtue of which the Developer was supposed to develop the same and give them compensation as well as allotment of flat and shop as stated in the Development Agreement. However, due to differences, Complainant - Respondent No.2 cancelled the Development Agreement and filed Suit for cancellation of the same. Objection is raised to the Development Agreement executed by Accused Nos.3 and 4 in favour of the Petitioner by the Complainant stating that they were not in possession of the property bearing CTS No.784 and had no right whatsoever to execute Development

Agreement regarding said CTS number to Petitioner.

5. On verification of the oral of the complaint, the JMFC, Pune passed order of issuance of process on 09.08.2012 for offences punishable under Sections 403, 406, 420, 423, 504, 506 readwith 34 of IPC and dismissed the complaint under Sections 404, 426, 447, 120 and 120B of IPC as no offence was made out. Revision was filed against the said order before the Sessions Court which was dismissed by order dated 28.10.2014. The said order dated 28.10.2014 is the subject matter of the present Petition.

6. Mr. Nargolkar, learned Advocate appearing on behalf of the Petitioner has made the following submissions:-

6.1. At the outset, he would submit that even before the Petition was filed, there was a Civil Suit pending between the parties since the year 2009 for the same cause of action. He would submit that the Civil Suit came to be decreed on 27.04.2012, copy of which is appended at page No.131 – Exhibit ‘AE-5’. He would submit that pursuant to determination of the said Civil Suit, Respondent No.2 – original Complainant did not file any further proceeding to challenge the said decree, but has taken recourse to filing the present criminal complaint in the month of August 2012. Hence, he would submit that filing of the present complaint was nothing but a counterblast to the issues which were decided by the Civil Court on evidence against Respondent No.2

– original Complainant.

6.2. He would further submit that the *lis* between the parties emanated on account of the Development Agreement which was also executed by Respondent No.2 – original Complainant himself and by virtue of the Development Agreement and the Power of Attorney was given to Petitioner and he was entitled to negotiate with third parties for taking possession of CTS No.784 in order to include the said CTS number in the entire larger development. He would submit that Petitioner as Developer was required to allot Respondent No.2 – original Complainant one shop, one flat which was earmarked and retained in the development.

6.3. He would submit that by virtue of the impugned order the learned Sessions Court failed to consider the fact that Petitioner was ready and willing to give possession of the flat and the shop at all times to Respondent No.2 – original Complainant, but recourse to criminal proceedings was made simply to harass the Petitioner who was the Developer. He would submit that in such circumstances when there was a subsisting relationship between the parties, the Court cannot and could not have drawn a conclusion about the offence of criminal breach of trust, cheating, criminal intimidation, since Petitioner – Developer had always in good faith performed his part of the obligation by constructing the entire development under the

Development Agreement.

6.4. He would submit that even if the complaint is taken at its face value, it cannot constitute *prima facie* offence under Sections 403, 406, 420 and 423 of IPC having been made out thereunder against Petitioner. Further, the charge of criminal intimidation is also not made out and all basic ingredients of the said offence of cheating, breach of trust and criminal intimidation are *prima facie* lacking in the complaint itself. He would submit that the order of issuance of process *prima facie* therefore displays complete non-application of mind by the learned Magistrate which has been partially upheld by the Sessions Court and to that extent the order of Sessions Court deserves to be quashed and set aside. He would draw my attention to the decree passed by the Civil Court and the order passed in Civil Application No.3173 of 2012 in First Appeal No.1341 of 2012 on the said decree. He would submit that on 24.09.2012, in Civil Application filed by the original Defendant for stay of the judgment and decree passed in the Special Civil Suit in favour of Petitioner, a direction was given to deposit the sum of Rs.5 lakhs which was awarded by way of damages to Respondents by the learned Trial Court.

6.5. He would draw my attention to paragraph No.16 of the said decree passed by the learned Trial Court with regard to the fact that in lieu of cancellation of agreement, the learned Trial Court had come to

the conclusion that the sum of Rs.5 lakhs would be an appropriate amount of damages to be offered to Respondent No.2 - original Complainant in view of the reasons stated in the said decree. Since the entire development was completed and fructified. He would fairly submit that the said Rs.5 lakhs was paid in the year 2020 to the other family members of Respondent No.2 and adequate proof thereof is placed on record. He would submit that out of the said amount, Rs.1.5 lakhs was admittedly deposited in the Trial Court in the year 2012 itself, which according to his instructions was withdrawn by the father of Respondent No.2. However, this fact is refuted by Respondent No.2's Advocate and he on instruction would submit that the said amount of Rs.1.5 lakhs stands and remained deposited in the Trial Court since the year 2012 onwards till today.

6.6. Therefore, Mr. Nargolkar would submit that the exercise of criminal jurisdiction by filing the present complaint is nothing but an abuse of the due process of law in trying to exert pressure on the Petitioner when the entire *lis* between the parties was duly decided by the learned Trial Court in the Civil Suit proceeding which was pending for cancellation of Development Agreement and filed by Respondent No.2 – Complainant himself. He would submit that the learned Trial Court in the Civil Court proceedings had come to the definite conclusion that the Development Agreement could not be cancelled in view of the entire development having taken place and the

Development Agreement having been acted upon and substantial third party rights having been crystallised.

6.7. However, insofar as the substantive right of Respondent No.2 – Complainant was concerned, the learned Trial Court opined that the same could be taken care of by awarding damages to Respondent No.2 – Complainant who was the Plaintiff therein and accordingly Petitioner – Developer was directed to pay compensation and damages of Rs.5 lakhs under the said decree. The said decree had been subsequently challenged by Complainant and is now pending in First Appeal.

6.8. In that view of the matter, he would submit that the order of issuance of process by the learned Magistrate and the subsequent order of upholding part of the said order by the learned Sessions Court in regard to the same transaction between the parties which was the subject matter of the Civil Suit and duly decided by the decree passed by the Civil Court cannot be sustained and therefore claims for quashing of the same.

7. *PER CONTRA*, Mr. Naik, learned Advocate for Respondent No.2 – Complainant has drawn my attention to the Affidavit-in-Reply dated 15.10.2016, copy of which is appended at page No.78 of the Petition. He would vehemently oppose the Petition as is filed on the basis *inter alia*, pertaining to acquisition of entitlement and title for the various survey / CTS numbers involved in the entire development

which were part of the Development Agreement executed in favour of Petitioner.

7.1. He would submit that CTS No.784 was not part and parcel of the decree in Regular Civil Suit No.1925 of 1957 passed by the Civil Court and that Accused Nos.2 and 3 were fully aware of the same, that they did not have any right, title and interest in the said CTS No.784 despite which they executed and entered into a Development Agreement with the Petitioner as family members and co-sharers of the said property. He would submit that the Petitioner in connivance with Accused Nos.2 and 3 executed the Development Agreement for that CTS number to the detriment of Respondent No.2 – original Complainant and included the same in the entire development process. He would submit that Accused Nos.2 and 3 were not the owners of CTS No.784 and their possession over the said CTS number was not acknowledgment of their ownership right at all and at the highest they would have been entitled to an allotment of a space of 10 feet x 50 feet for their washing of clothes and nothing more after the development had taken place. He has alleged that the Developer has not paid any amount as promised under the Development Agreement to any of the family members and has cheated the family members of Respondent No.2 – original Complainant.

7.2. Hence, he would submit that the learned JMFC has passed a correct order indicting the conduct of Petitioner and directed issuance of process for the offences which are charged. Hence, he would submit that the present Petition be dismissed with costs.

8. I have considered the submissions made by both the learned Advocates at the bar and perused the record of the case with their able assistance. Submissions made by the learned Advocate have received due consideration of the Court.

9. Having considered the gamut of the proceedings there cannot be any case made out for cheating in the present facts and circumstances of the case primarily because all rights of the parties are governed by rights and obligations in the executed and registered documents. Further and most importantly the Civil Court has given its judgment that the Development Agreement cannot be cancelled and the same is under challenge in First Appeal by the Complainant. The issue is purely civil in nature and amenable to the Civil Court proceedings. Parallel criminal proceedings for the same cannot be invoked infact there is no element of cheating whatsoever which can be invoked. In that view of the matter upholding of the offence of cheating in the Sessions Court order dated 28.10.2014 is not sustainable at all. Further once the Session Court comes to a categorical conclusion that the Complaint under Section 404, 426 and

447 is not made out then the offence of cheating under Section 420 in the aforesaid facts is clearly unsustainable. Once a party approaches a Civil Court and is prosecuting its substantive right and entitlement for the same cause of action unless a criminal intent is *prima facie* shown, the criminal complaint is not maintainable. In the present case rights of parties are governed by Development Agreement, Power of Attorney and Revenue Record of the subject land for which civil course of action is already invoked. In that view of the matter the case of Petitioner therefore deserves to be sustained.

10. In view of my aforesaid observations and findings order dated 28.10.2014 passed by the Sessions Court in revision proceedings is quashed and set aside.

11. Resultantly, order of issuance of process dated 09.08.2012 is set aside.

12. Petition is allowed in terms of prayer clause “b” and disposed.

[MILIND N. JADHAV, J.]

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