

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 432 OF 2019

Santosh Shantilal Bothara.Petitioner.
Versus
Union of India & Others.Respondents.

WITH

WRIT PETITION NO. 433 OF 2019

Narinder H. Kandhari.Petitioner.
Versus
Union of India & Others.Respondents.

WITH

WRIT PETITION NO. 588 OF 2019

Sakharam S. Harale.Petitioner.
Versus
Union of India & Others.Respondents.

Dr. Sujay Kantawala, Shekhar Wig, Poorva Patil I/b Sebin M. Joseph for the Petitioner.

Mr. H. S. Venegaonkar for Respondent No. 1 and 2.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

Date : **February 28, 2019.**

P. C. :

1. The Petitioners in all the above petitions have approached this Court invoking the jurisdiction of this Court under Article 226 of the Constitution of India read with the provisions of section 482 of Code of Criminal Procedure, 1973, seeking to quash and set aside the charge-sheet/criminal proceedings of Special Case No. 52 of 2017 pending on the file of learned Special Judge, CBI, Pune for the

offence punishable under sections 120-B, 420 read with 511 of the Indian Penal Code, 1860 and sections 13(2) and 5 read with 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The above referred charge-sheet is filed in all against 18 accused. Accused Nos.1 to 4-the purchasers, accused No.5-the advocate and accused No.6-the proprietor approached the Special Court by filing discharge applications and admittedly they have been discharged from the above special case. Accused Nos.7 and 8-the Sub Registrars as well as accused Nos.11 to 15, 17 and 18-power of attorney holders of the sellers approached this Court by filing various writ petitions for quashing the above special case. Those petitions came to be disposed of by the order dated 5th December 2018 thereby the proceedings of Special Case 52 of 2017 came to be quashed and set aside *qua* those Petitioners.

3. The case of the Petitioners in the extant petitions is exactly similar to the case of original accused Nos.11 to 15. So far those accused are concerned, the following observations made by this Court while disposing of their writ petitions are relevant :

“21. Now we will consider the case of the petitioners in rest of the petitions being writ petition Nos.4627, 4641, 4642, 4643, 4644 and 4645 of 2018. The said petitioners are the power of attorney holders of the sellers and they are charged with offences under Sections 120-B and 420 read with 511 of the IPC. As observed earlier, the sellers have not been arraigned as accused, however, the petitioners who are the power of attorney holders of the sellers have been impleaded as accused for the offences punishable under Sections 420 read with 511 and 120-B of the IPC.

22. Mr. Nankani, learned counsel for the petitioners in the above referred petitions submits that out of total 1300 Acres of land purchased by the respondent Nos.3 and 4, at later stage, it was found that the land admeasuring 105 Acres belonged to MSRDC and, thereafter, sale deeds in respect of this 105 Acres of land were cancelled and correction deeds were executed. He submitted that the disputed sale deeds were executed on the basis of mutation entry Nos.638, 639, 640 and 641 effected by the Talathi. The petitioners bona fide and in good faith believed that these lands belonged to the concerned owners and were not aware about being owned by MSRDC. In addition to this, he also submitted that no offence to cheat or attempt to cheat is made out from the charge-sheet. Mr. Nankani heavily relied upon a decision of the Apex Court in **Mohammed Ibrahim and ors. Versus State of Bihar and anr. (2009) 8 SCC 751.**

23. Mr. Venegaonkar, learned counsel for the CBI, opposed these petitions vehemently on the ground that the petitioners viz. owners and/or their power of attorney holders were aware that the land in question was acquired by the MSRDC and despite this, they executed sale deeds thereby entering into conspiracy to cheat the MSRDC/Government of Maharashtra.

24. Having seen the petitions, charge-sheet and reply of the respondents and having given our anxious thoughts, we find merit in the submissions of Mr. Nankani. It is admitted fact that though initial name of MSRDC was recorded in the concerned 7/12 Extracts, the mutation entry Nos.638, 639, 640 and 641 came to be effected thereby deleting the name of MSRDC.

In the light of this, the petitioners (sellers/their power of attorney holders) were under a bona fide belief that the land is no more required by MSRDC and, thereafter, entered into transactions with the purchasers and, therefore, no fault can be

attributed to them. The act of the petitioners, in our opinion, is therefore covered by provisions of Section 79 of the IPC inasmuch as the transactions, in question, were done by them in good faith under bona fide mistake of fact.

The Hon'ble Apex Court in **Mohammed Ibrahim(supra)**, considered the case where the second respondent therein filed a complaint against the appellant Nos. 1 to 3 (accused Nos.1 to 3) and 2 others before the Chief Judicial Magistrate, Madhubani, alleging that he was the owner of Katha No.715, Khasra Nos.1971 and 1973 admeasuring 1 bigha, 5 kathas and 18 dhurs; that the first accused who had no connection with the said land and who had no title thereto, had executed two registered sale deeds dated 2-6-2003 in favour of the second accused in respect of a portion of the said land measuring 8 kathas and 13 dhurs; and that the third, fourth and fifth accused being the witness, scribe and stamp vendor respectively in regard to the sale deeds had conspired with accused 1 and 2 to forge the said documents; and that when he confronted accused 1 and 2 about the said forgery, they abused him and hit him with fists and told him that he can do what he wanted, but they will get possession of the land on the basis of the said documents. The Apex Court in the backdrop of the above said facts held that no ingredients of cheating were made out in the charge-sheet and that in such facts it may be possible for the purchaser to allege that the vendors had cheated them but when there was no false or misleading representation to the complainant. The relevant observation of the Apex Court are contained in paragraph Nos.19, 20, 21 and 23 which reads as under :

“19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

- (i) to deliver any property to any person, or*
- (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).*

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by

the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner."

25. The present case is fully covered by the above observations. The present case as a matter of fact stands on better footing inasmuch as no complaint from the Government or MSRDC was made to the effect that any inducement/representation was made to them. Thus, in the absence of any such representation/inducement to the MSRDC and the purchasers having not filed any complaint, rather they were made accused and later on discharged, then, none of the ingredients of the offence of cheating or attempt to cheat are made out. The petitioners are not attributed any independent role and cannot be fastened with liability independent of conspiracy or cheating, more so when the sellers whom the petitioners represented are not accused, besides this, the buyers have also been discharged. When all others concerned with the same transaction viz. the purchasers, the advocate, and the buyers are not charged with the offence of cheating or attempt to cheat, the petitioners alone cannot be part of any alleged conspiracy to do so."

4. The above observations are also applicable to the present Petitioners as admittedly they are similarly situated. In that view of the matter, we are of the opinion that continuation of the criminal proceedings against the Petitioners would be nothing but an

abuse of process of Court, an exercise in futility and would result in grave miscarriage of justice. Hence, the criminal proceedings of Special Case No. 52 of 2017 arising from the FIR No.RC/PUNE/ 2014/A/0015 are quashed and set aside *qua* the Petitioners.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]