

ASHFAQ AHMED QUERESHI & ANR.

v.

NAMRATA CHOPRA & ORS.

(Criminal Appeal No. 2100 of 2013)

DECEMBER 17, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

Code of Criminal Procedure, 1973 – s.482 – Criminal proceeding u/s. 420 IPC against respondents-accused – Complaint alleging that respondent No. 1 and 2 entered into agreement to sell a piece of land to them, showing themselves to be exclusive owners of the land – Whereas they had shown the same land as open land for parking in their application which they had filed with co-sharers seeking permission for construction of Club House – Proceedings quashed by High Court on the ground that in the application seeking permission to raise Club House, their signatures were forged – On appeal, held: There is sufficient evidence to show that respondent Nos.1 and 2 were not exclusive owners of the property in dispute and that in the application for permission to construct Club House, the disputed land was shown as open land for parking – Their plea of forged signatures is not acceptable because the plea was not raised earlier, nor was there any complaint in this regard made either before Police or Court – The case involves large number of disputed questions of fact – Therefore, High Court could not have quashed the proceedings – Penal Code, 1860 – s. 420.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2100 of 2013.

From the Judgment and Order dated 15.03.2012 of the High Court of M. P. at Jabalpur in MCRC No. 8882 of 2011.

Vikas Upadhyay for the Appellant.

A Prashant Kumar, Vaibhav Srivastava (for AP & J Chambers), Arjun Garg, Mishra Saurabh, Sangita Bhayana, Amlan Kumar Ghosh for the Respondents.

The Order of the Court was delivered by

B **DR. B.S. CHAUHAN, J.** 1. This appeal has been preferred against the impugned judgment and order dated 15.3.2012 passed by the High Court of Madhya Pradesh at Jabalpur in M.Cr.C. No. 8882/2011, by which the High Court has quashed the criminal proceedings against the respondent
C Nos. 1 and 2 in exercise of its power under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.').

2. Facts and circumstances giving rise to this appeal are
D that:

A. The appellants entered into an agreement for sale of land admeasuring 1.10 acres of land out of 2.20 acres of total land on 26.11.2009 which had been claimed by the said respondents 1 & 2 to be of their exclusive ownership and for
E that appellants paid a sum of rupees fifty lakhs to the said respondents as earnest money out of the consideration of Rs.1,50,93,540/-.

B. The sale deed could not be executed as the appellants
F did not make the payment for the reason that the said respondents did not complete the legal formalities for transferring the land. Later on, the appellants came to know that the said respondent Nos.1 & 2 alongwith other co-sharers had got permission dated 27.3.2006 from the Municipal Corporation of Bhopal for construction of the Club House on the part of the
G said land and the subject matter of agreement to sell had been shown therein as open land for parking purposes. The Club House has already been constructed on the land and the suit land is to be used only for parking purpose.

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C. After realizing that the appellants got cheated, there had been claims and counter claims between the parties and ultimately several notices were exchanged between the parties. The appellants claimed a refund of rupees fifty lakhs with interest, while the respondents wanted to forfeit the earnest money for non-payment of further instalments as agreed by the parties. The appellants filed a complaint under Section 200 Cr.P.C. on 26.8.2010.

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D. As the respondents came to know about filing of the complaint they sold the suit property to one Ms. Nanhi J. Walia on 23.10.2010.

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E. In the complaint case, evidence of the complainant and his witnesses were recorded in November, 2010 and being satisfied, the learned Magistrate took cognizance vide order dated 6.12.2010 for the offence punishable under Section 420 of Indian Penal Code, 1860.

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F. All the shares of other co-sharers of the said respondent Nos. 1 & 2 were also sold on 23.2.2011 to Ms. Nanhi J. Walia.

G. Aggrieved, the respondent Nos. 1 & 2 filed a petition under Section 482 Cr.P.C. for quashing the complaint qua them on the ground that there had been a partition between the parties (co-sharers) and so far as the application for seeking permission to raise the Club House on the suit land was concerned, it had not been signed by the said respondents/applicants, rather their signatures had been forged by the co-sharers.

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H. The High Court considered the case of both sides and ultimately quashed the criminal proceedings qua the said respondent Nos. 1 and 2.

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Hence, this appeal

3. We have heard Shri Vikas Upadhyay, learned counsel appearing for the appellants, Shri Prashant Kumar, learned counsel for respondent Nos. 1 & 2 and Shri Arjun Garg, learned

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A counsel for the State and have also gone through the record of the case.

B 4. There is sufficient evidence on record to show that the property belonged not only to the respondent Nos.1 & 2, but they were the owners alongwith respondent Nos.3 and 4. The respondent No.3 has died and respondent No.4 has been deleted from the array of parties by this court earlier. There is ample evidence on record that the permission had been sought and obtained from Municipal Corporation of Bhopal for raising the construction of a Club House and the land in dispute had been shown as vacant land for parking. It is too late for the respondent Nos.1 & 2 to say that the respondent Nos.3 and 4 might have forged their signatures for the reason that it is not their case in the counter affidavit or even before the High Court that they had ever raised any objection or filed any complaint before the police or any competent court for forging their signatures by someone else on the said application. More so, there are disputes regarding partition and demarcation of shares between the respective parties. The sale deeds are also on record that their shares have been sold not only by respondent Nos.3 & 4 but also by respondent Nos.1 & 2 subsequently and there is no land available today. No explanation could be furnished by Mr. Prashant Kumar appearing for respondent nos. 1 & 2 as to why this fact had not been brought to the notice of the court.

F 5. As the case raises a large number of disputed questions of fact, we are of the considered opinion that there was no occasion for the High Court to allow the petition under Section 482 Cr.P.C. and quash the criminal proceedings qua the said respondents:

G 6. In view of the above, we set aside the impugned judgment and order dated 15.3.2012 and allow the appeal. The learned trial court is directed to proceed against the said respondents in accordance with law.

H Kalpana K. Tripathy

Appeal allowed.