

Mukesh Vs. State of Maharashtra and Another

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Court : Mumbai Aurangabad

Decided On : Nov-05-2014

Judge : T.V. Nalawade

Appeal No. : Criminal Writ Petition No. 1083 of 2014

Appellant : Mukesh

Respondent : State of Maharashtra and Another

Judgement :

1. The petition is filed to challenge the order made by the learned Additional Sessions Judge in Criminal Appeal No.4/2011. Application at Exhibit 25 was filed by the present petitioner, appellant for giving permission to him to lead evidence in appeal under the provisions of section 391 of the Code of Criminal Procedure. This application is rejected.

2. This Court heard the learned counsel for the petitioner. With the petition record like copy of judgment and order of the learned Judicial Magistrate, First Class, Dhule on R.C.C. No.30/2007 which was filed against the petitioner is produced and copy of order and some record like copy of so called no dues certificate, death certificate of the father of the petitioner is produced.

3. The aforesaid case was filed against the petitioner by police for offences punishable under sections 406, 418, 420, 468 of the Indian Penal Code. The learned Judicial Magistrate convicted the petitioner for offence punishable under

sections 406 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1000/-. The case was filed after making investigation by police of the FIR given by one Gangabai. It is her case that she had purchased two plots bearing Plot Nos.246 and 247 from one Indubai and these plots were from the property developed by Jay Jinendra Cooperative Housing Society Sakri Road, Dhule. In the past the father of the petitioner was Chairman of this society and he had allotted these two plots to Indubai. After purchasing these two plots in the year 1992 original complainant Gangabai made construction of shopping complex on plot No.246 and plot 247 was open but it was enclosed by making construction of compound wall. It is her case that no dues certificate was given to Indubai by the father of the accused namely Padamlal and she is owner and she is possession since 1992. It is her case that she had requested the accused to create record of ownership in her favour in respect of the plots but the accused avoided to do so as he wanted to get money for that from her. It is contended that she approached the office of the Deputy Registrar Cooperative Societies, and directions were given by the said office to the accused to do the needful in her favour but the accused did not take such steps. It is contended that to cause loss to her the accused then sold these two plots to different persons and thereby committed offence punishable under the aforesaid sections.

4. Charge was framed for the aforesaid sections. Before the trial Court Gangabai examined herself and she examined her vendor Indubai. Some neighbouring persons were examined to show that Gangabai has been in possession since long, she has made construction on two plots. On the other hand the accused admitted that he has executed sale deed in favour of third persons in respect of the disputed plots. The trial Court has held that Gangabai is the owner of the plots and to cause loss to her the accused created some record and he sold the plots and thereby committed offence under section 406 of the Indian Penal Code.

5. In the application filed under section 391 of the Cr.P.C. the appellant/accused contended that the no dues certificate, allegedly issued by late Padamlal, father of the accused, cannot be used as his father had died prior to the date of the certificate. He contended that in view of these circumstances the certificate needs

to be sent to handwriting expert to ascertain as to whether the certificate really bears the signature of his father. He also contended that death certificate is required to be read in evidence. This application was opposed by the original complainant. The learned Additional Sessions Judge has rejected the application by holding that the accused is attempting to protract the decision of the appeal. Substantive sentence is suspended in the appeal.

6. The learned counsel for the petitioner has placed reliance on the case reported as AIR 2001 SC 2120 (Rambhau v State of Maharashtra). In this case the Apex Court has discussed the power of the appellate Court under section 391 of the Cr.P.C. There is no question about the power of the appellate Court. The learned counsel has placed on the judgment reported as AIR 1989 SC 361 (Harpal Singh v. State of Himachal Pradesh) and submitted that the death certificate needs to be read in evidence. In that case the Apex Court discussed the provision of Section 35 of the Evidence Act and it is laid down that there is no need of examination of the author of the certificate for proof of the death certificate. There cannot be any dispute over this proposition. Learned counsel then placed reliance on a case reported as 2004 Cri.L.J. 4023 (Rajinder Singh v. State of West Bengal). In this case also the power of Appellate Court under section 391 of the Cr.P.C. is discussed.

7. Considering the nature of dispute and the aforesaid circumstances which are relevant to the matter, this Court has no hesitation to hold that the circumstances on which the petitioner wants to rely upon to defend the case cannot be of much use to him. It is upto the complainant to prove that under some documents she had purchased the plots from the original member. She will rely on the admission given by the accused in the office of the Deputy Registrar, Cooperative Societies, in respect of the dispute and further there is evidence of neighbouring plot holders showing that the complainant has been in possession and she has made construction on these plots. In spite of these circumstances the accused sold two plots to third party and that has unnecessarily created complications and caused loss to the complainant though she has not lost the possession. It is clear that only to protract the things, the petitioner is playing such tactics. It is up to the Appellate Court to decide as to whether and to what extent this defence which was already

taken in the trial Court is proved.

8. In the result, the petition stands dismissed.

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