

Jit Vinayak Arolkar vs State Of Goa And Ors on 6 January, 2025

Author: Abhay S. Oka

Bench: Abhay S. Oka

2025 INSC 31

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 393 OF 2024

JIT VINAYAK AROLKAR

...APPELLANT

VERSUS

STATE OF GOA & ORS.

...RESPONDENTS

JUDGMENT

ABHAY S. OKA, J.

FACTUAL ASPECT

1. By the impugned judgment, the High Court has dismissed a writ petition filed by the appellant for quashing a First Information Report (for short, the ‘impugned FIR’) registered at the instance of the 4th respondent for the offence punishable under Section 420 of the Indian Penal Code, 1860 (for short, ‘IPC’).

2. The dispute pertains to the property known as “CAPNIVORIL GUERA”, “CAPNIVORIL MOLLY” or “KAPNI VARIL GHERA” situated in Dhargalim Village, Pernem, Goa, which is described in the Land Registration Office of Date: 2025.01.06 16:43:26 IST Reason:

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1(new) bearing Sy No. 481/o (for short, ‘the subject property’).

3. On 16th October 2018, the 4th respondent filed twelve separate civil suits in the civil court in Goa, claiming a declaration of his ownership in respect of the subject property. In the suits filed by the 4th respondent, it was contended that the subject property is a common and undivided property in

which the 4th respondent has an undivided share, which he inherited from his father. The appellant filed a written statement in the suit on 1st September 2020 and claimed that the property was originally owned by one Sacarama Sadassiva Natecar. On 23rd October 2020, the 4th respondent, through his constituted attorney, filed a complaint with the Superintendent of Police, North Goa District, alleging that the appellant had sold a portion of the subject property without the consent of all the legal heirs of both co-owners. Based on the said complaint, the impugned FIR was registered by the police. The appellant was granted anticipatory bail by the sessions court vide order dated 10th February 2021 in connection with the impugned FIR. On 23rd October 2021, the appellant filed a writ petition before the High Court for quashing the FIR. By the impugned judgment dated 1st March 2023, the High Court dismissed the petition.

SUBMISSIONS

4. The learned senior counsel appearing on behalf of the appellant stated that the appellant is the constituted attorney of Vidhya Natekar and Sanjay Natekar, the vendors under the sale deeds subject matter of the impugned FIR. He submitted that the 4th respondent in his complaint had accepted co-ownership of the vendors in respect of the subject property under the sale deeds. Learned senior counsel submitted that a complaint was filed by the 4th respondent more than two years after the date of institution of the civil suit. Learned senior counsel pointed out how Sacarama Sadassiva Natecar became the owner of the subject property based on documents executed in the years 1928 and 1929. He submitted that Vidhya Natekar and Sanjay Natekar are the legal representatives of Sacarama Sadassiva Natecar. He submitted that both claimed a half share in the subject property in view of the regime of the communion of assets applicable in the State of Goa. He pointed out that, on 10th May 2013, the appellant had published a public notice calling for objections from any interested party concerning the subject property.

5. He pointed out that the ingredients of the offence of cheating under Section 415 of IPC were not made out. He relied upon a decision of this Court in the case of R.K. Vijayasathya and Anr. v Sudha Seetharam and Anr.¹ He also relied upon a decision of this Court in the case of Mohd. Ibrahim v State of Bihar². The submission of the learned senior counsel appearing for the appellant is that the registration of the impugned FIR was mala fide. He pointed out that the appellant, apart from being a businessman, is an active member of the Maharashtra Gomantak Party and is a Member of the Legislative Assembly of the State of Goa.

6. Learned senior counsel representing the 4th respondent submitted that the appellant tried to dishonestly misappropriate the property belonging to the 4th respondent, who is a resident of the United States of America, and sold the subject property to third parties. He has done that with the knowledge that the 4th respondent was a co-owner. He submitted that the supplementary statement of the 4th respondent was recorded in the impugned FIR. Due to Covid-19, the investigation could not be carried out based on the impugned FIR. He relied upon a decision of this Court in the case of M/s Neeharika Infrastructure Pvt. Ltd. v State of Maharashtra and Ors.³ and submitted that the investigation could not be scuttled by interfering with the FIR at the initial stage of the investigation. He submitted that an FIR is not an 1 (2019) 16 SCC 739 2 (2009) 8 SCC 751 (2021) 19 SCC 401 encyclopaedia that can disclose all facts and details of the offence. He also pointed out that the

consideration under the sale deed has been transferred to the appellant and not to the members of the Natekar family. He submitted that merely because civil suits are pending, that is no ground to quash the criminal proceedings as the conduct of a party may amount to an offence and may also give rise to civil claims. He relied upon a decision of this Court in the case of Amit Kapoor v Ramesh Chander and Anr.⁴ in this regard. The learned counsel would submit that an opportunity may be granted to the police to complete the investigation by upholding the order of the High Court.

7. The learned counsel appearing for the State of Goa supported the impugned judgment and order.

CONSIDERATION OF SUBMISSIONS

8. We have carefully perused one of the sale deeds, which is the subject matter of the impugned FIR. The sale deeds are similar. The appellant signed the sale deed as the constituted attorney of Vidhya Natekar and Sanjay Natekar and also in his capacity as a confirming party. The said power of attorney executed by Vidhya Natekar and Sanjay Natekar in favour of the appellant contains a recital that the executants, i.e., Vidhya Natekar and Sanjay Natekar, are the co-owners of the subject property. The 4 (2012) 9 SCC 460 legal effect of the sale deeds which are the subject matters of the impugned FIR is that the ownership rights of Vidhya Natekar and Sanjay Natekar were transferred to the purchasers.

9. It is pertinent to note that civil suits were filed by the 4th respondent in October 2018. In the suits, he claims to be a co-owner or person with an undivided share in the subject property. Two years after the institution of the said suits, the constituted attorney of the 4th respondent filed a complaint with the Superintendent of Police on 23rd October 2020. In the complaint, she stated that the subject property was originally owned by the predecessor of the 4th respondent and Sadashiv Natekar. In paragraph 5 of the complaint, the constituted attorney of the 4th respondent stated thus:

“5. This vicious and malafide exercise of deceit, forgery and land- grabbing has been systematically and high-handedly perpetrated by one Mr. Jit Vinayak Arolkar who claims to be the Power of Attorney holder of legal heirs of Sadashiv Sakharam Natekar. The said Sadashiv Natekar was the co-owner of the said property along with vaikunth Rawloo Khalap. Thus, it is clear that, the said property can in no way be arbitrarily sold without the express consent of all the legal heirs of both the Co-owners of the said property.” (emphasis added) It is pertinent to note that the constituted attorney of the 4th respondent has omitted to mention in the complaint that two years before the filing of the complaint, declaratory suits were filed by the 4th respondent, which were pending. Interestingly, two years after the registration of the FIR, on 13th October 2022, the 4th respondent filed a supplementary complaint with the police alleging that even the said Vidhya Natekar and Sanjay Natekar had also committed an offence.

10. Thus, in short, the grievance of the 4th respondent is that the vendors under the sale deeds had only an undivided share in the subject property, and they could not have sold the entire subject

property under the sale deeds. The contention of the appellant is that what is sold is the right, title and interest of Vidhya Natekar and Sanjay Natekar. Thus, the dispute between the parties is predominantly a civil dispute.

11. Section 415, which defines cheating, reads thus:

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.”

12. It is pertinent to note that the purchasers under the sale deeds have not made any grievance about the sale deeds. In the case of Mohd. Ibrahim v State of Bihar², in paragraphs 20 to 23, this Court held thus:

“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.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.

A clarification

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be

understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.” (emphasis added) 12.1 In this case, it is impossible to understand how the appellant deceived the 4th respondent and how the act of execution of sale deeds by the appellant caused or was likely to cause damage or harm to the 4th respondent in body, mind, reputation or property. The appellant has not purported to execute the sale deeds on behalf of the 4th respondent. He has not purported to transfer the rights of the 4th respondent. There is no allegation that the appellant deceived the 4th respondent to transfer or deliver the subject property.

13. Taking the complaint as correct, the offence of cheating under Section 415 of IPC was not made out against the appellant. Moreover, the complaint was filed by the 4th respondent for the first time after a time gap of two years from the date of institution of the civil suits. In the complaint, he suppressed the fact that civil suits were already filed in which applications for temporary injunction were made. When there was a dispute over the title, the act of the 4th respondent of setting in motion criminal law two years after the date of filing of the suits amounts to nothing but abuse of the process of law.

14. Considering the above, the appeal succeeds. The impugned judgment and order dated 1st March 2023 is set aside, and FIR No.177 of 2020 initially registered with Pernem Police Station, Pernem in the State of Goa, and now transferred to the Special Investigation Team of the Economic Offences Cell, and proceedings based thereon are hereby quashed and set aside only as against the appellant. Accordingly, the appeal is allowed on the above terms. We clarify that we have made no adjudication on the merits of the pending civil dispute between the parties.

.....J. (Abhay S. Oka)J. (Ujjal Bhuyan) New Delhi;

January 06, 2025