

**RCC No.2656/2011
State/ Dinesh and oth.**

**ORDER BELOW EXH.55
(Passed on 21.06.2023)**

Accused No.3 Devanand Kumar Annasaheb Wankhede has filed application for discharge u/sec. 227 of Cr.P.C.

2. It is averred in the application that the offence is registered u/s 468, 471, 420 R/w 34 of I.P.C. in the crime No.81/2011 with Ambazari Police Station.

3. It is the case of prosecution that Mr. Mahendra Dhawade had made complaint on 16.07.2011 that they came to know about the agreement to sale executed by accused No.2 namely Bhat, in favour of applicant i.e. accused No.3 namely Devanand Kumar by accepting the amount of Rs.10,00,000/-. On 20.06.2011, they came to know about the agreement from the paper public notice issued by applicant i.e. accused No.3 namely Devanand Kumar.

4. It is further averred in the application that applicant/ accused No.3 had paid amount of Rs.10,00,000/- by cheque No.379372 and 379831 dated 22.04.2011 drawn Shikshak Sahkari Bank to the accused No.1 and 2. He himself had given paper publication for inviting objection. After reading the paper publication, complainant got to know about the agreement. Therefore,

applicant/accused No.3 had no intention of fraud. Applicant/accused No.3 was himself been cheated by other accused No.1 and 2 by money and documents. Applicant/accused No.3 is himself victim by accused No.1 and 2. Therefore, he needs to be discharged from the offence punishable u/s 420, 468, 471 R/w 34 of I.P.C. u/s 227 of Cr.P.C.

5. Learned APP has filed say and resisted the application. It is contended that applicant /accused No.3 entered into agreement to sale of plot No.52, 53, 54, 55 and 56 for consideration of Rs.10,00,000/- with accused No.2 Manohar Bhat. However, the said plot already sold to other person and they were in the possession on the basis of sale deed executed on 14.06.2006. Applicant/accused No.3 having knowledge that the property was not belongs to accused No.2 Manohar Bhat, then also he entered into agreement for sale, of those properties and committed crime. Hence, prayed that application be rejected.

6. Heard Ld. Adv. for Applicant/accused No.3 and ld. APP. From rival contentions of both the parties, following points arise for my determination, my findings thereon with reasons are as under :-

| <u>Points</u> | <u>Findings</u> |
|--|-------------------------|
| 1. Whether accused No. 3 is entitled for discharge ? | ... No. |
| 2. What order ? | ... As per final order. |

REASONS

7. Perused documents on record. Charge sheet No. 81/2011 is filed on 13.09.2011 against accused No.1 Dinesh Gajbe, accused No.2 Manohar Bhat, accused No.3 Devanand Kumar Wankhede, accused No.4 Vinod Gaur and accused No.5 Tarachand Sharma for the offence punishable under Sec.420, 468, 471, r/w 34 of the I.P.C.

8. It is the case of prosecution that complainant Mahendra Vitthalrao Dhawade and other members of the Gandhi Nagar Co. Op. Housing Soc. had purchased plot at village Babulkheda, Kh. No.82/1, Ph.No.39, City Survey No.7112, situated within the limits of Nagpur Municipal Corporation. However, on 19.06.2021, they came to know through public notice published in 'Lokmat' Newspaper, that accused No.3 Devanand Kumar Wankhede had entered into agreement for sale dated 22.04.2011 with accused No.2 Manohar Bhat, in respect of Plot Nos.43 to 54, total admeasuring 27797.78 Sq.Ft., valued at Rs.3,75,60,800/- and paid amount of Rs.10,00,000/- by two cheques. The said agreement for sale signed by accused No.1 Dinesh Gajbe and accused No.2 Manohar Bhat on behalf of society and accused No.3 as a purchaser and accused Nos.4 and 5 as witnesses. The said agreement executed without permission and consent of plot owners i.e. complainant Mahendra Dhawade and other members of the society. Thus, accused Nos.1 to 5 cheated the complainant as well as other members of the society. Therefore, on 16.07.2011 he lodged complaint against accused Nos.1 to 5 which was registered as FIR No.184/2011

at Ambazari Police Station for the offence punishable u/s 420, 468, 471 R/w 34 of I.P.C..

9. Record shows that investigating officer has recorded statement of witnesses and collected documents and thereafter filed charge sheet against accused No.1 to 5, wherein it has alleged against accused No.3 that he had entered into agreement to sale in respect of above said properties without consent of complainant and other members of the society and committed the offence.

10. Learned advocate for the accused had placed his reliance in the case of **Union of India, Vs. Prafulla Kumar Samal and another, reported in 1979 Cr.L.J. 154**, wherein it is held by Hon'ble Apex Court that, *"The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused"*.

11. I have perused alleged agreement for sale executed between accused No.2 Manohar Bhat and accused No.3 Devanand Wankhede on 22.04.2011. The said agreement was in respect of plot No.43 to 54 in Kh.No.82/01 situated at Mauza Babulkheda, Nagpur. The said agreement for sale executed merely on Rs.100/- stamp paper for consideration of Rs.8,15,16,892/- and purchaser had paid amount of

Rs.10,00,000/- by way of cheque Nos.389382 and 389383 drawn on Shikshak Sahkari Bank Ltd., Sadar dated 22/04/2011.

12. The Investigating officer has also filed copy of sale deed dated 05.06.2006 executed in between accused No.1 Dinesh Gajbe and complainant Mahendra Dhawade in respect of property i.e. plot No.50 in Kh.No.81/1, Mauza Babulkheda, Nagpur. Prima facie, it appears from record that complainant Mahendra Dhawade was the owner of plot No.50 in Kh.No.81/1, Mauza Babulkheda vide sale deed dated 05.06.2006. However, accused No.2 Manohar Bhat entered into agreement for sale with accused No.3 Devanand Kumar Wankhede in respect of the said property and other plots in Ph.No.81/1 on 22.04.2011 without the consent of owner i.e. complainant Mahendra Dhawade and other members of the society. It prima facie shows that accused No.2 was having knowledge of the said fact despite that he entered into the agreement for sale in respect of the said property with accused No.3 with intention to cheat the complainant and other members of the society. Whether accused No.3 was innocent and whether he himself being cheated by accused Nos. 1 and 2 is required to be find out.

13. Documents on record and statement of witnesses filed alongwith a chargesheet, prima facie shows involvement of accused No.3 in the alleged crime and therefore, it is not just and proper to come to the conclusion that there is iota of evidence against accused No.3. Considering the nature of offence and complexity of matter, fact

finding trial is very necessary, Therefore, at this stage, it cannot be concluded that the ingredients of alleged offences are not made out against accused No.3. Therefore, I am not inclined to discharge accused No. 3 from the present case. Hence, I answer the point No. 1 accordingly.

As to Point No. 2 :-

14. In view of discussion about point No.1, I pass the following order :-

ORDER

1. Discharge application filed by accused No.3 Devanand Kumar Annasaheb Wankhede at Exh.55 is rejected.

Nagpur.
Date :21.06.2023.

(S.T. Dande)
Chief Judicial Magistrate,
Nagpur.