p **Sessions Case No.3/2013**

ORDER BELOW EXHS.33

1] The applicant is arraigned as Accused No.1 . The applicant-accused and other co-accused are charge sheeted for the offences punishable under Sections 364-A, 395, 397, 120-B, 342, 465, 467, 471 of the Indian Penal Code by the Satara City Police Station. He has filed this application under section 227 of the Code of Criminal Procedure , 1973 praying for discharge from the offences punishable under Sections 364-A, 325, 397, 120-B 342, 465, 467, 471 of the Indian Penal Code.

2] With the view to appreciate the submissions made by the Advocates, appearing for the parties, it will be necessary to refer to the case of the prosecution. The Complainant, Jagannath Ramchandra Bhosale, aged 60 yrs. is a resident of village Khodashi, Taluka-Karad, Dist.- Satara. He owns several agricultural lands at Mouje Hanbarwadi, Vanyachi Wadi, standing in his name and in the names of his relatives. He is managing all properties as a Power of Attorney Holder of the owners of the land. On 22.2.2003, he had agreed to sell out the landed properties to one Vishram Natha Kamble (Accused), Sanjivan Natha Kamble-(Applicant-Accused), Sunil Natha Kamble(Accused), Banda Natha Kamble(Accused), for a valuable consideration of Rs.70,000/-. It was agreed that, an amount of

Rs.15,00,000/- will be paid as an earnest amount; but, the Accused had paid him an amount of Rs.1,00,000/- only. Thereafter, the above named Accused had paid him amounts from time to time and accordingly they had paid him an amount of Rs.24,08,000/-. The Complainant had therefore, executed an agreement to Sale in favour of the Accused Nos 3 to 7 in January, 2005 and it was agreed that the Accused Nos 3 to 7 shall pay the balance amount within three months and the Sale Deed shall be executed. The Accused had not complied with their part of contract within stipulated period and therefore, the Complainant had issued a notice to the Accused. The Accused had not replied and therefore, the Complainant had started searching other customers for the land.

3] On 25.1.2012, one Shivaji Ganpati Yadav alias Nana Fouji (C0-accused) had gone to the house of the Complainant at 5.00 p.m. and had told him that, he had a customer for the land. He had introduced the Complainant to the proposed customer on phone and meeting was arranged on 26.1.2012, at Hotel Mahindra. The Complainant, his son Yogesh Bhosale, and his friends Rajkumar Ghare, Krishna Tate had gone in the car of the Complainant to Hotel Mahindra Executive. One unknown person had approached them in the hotel. The unknown person had talked to some person on telephone and told the Complainant that, the customer was arriving in a short time. He had also requested the Complainant that in the mean time he should accompany him to the Advocate's office. The Complainant, and Rajkumar Ghare had therefore, gone with the unknown person, as led by him. He had taken them to the Sadar Bazar area in Satara. Nana Fouji and another persons were already present at the spot. They all had entered into one room, where the Complainant and Kashinath Ghare were assaulted by 8 to 10 people by means of wooden sticks and hand and fist blows. Assailants had also made them blind fold, and had also tied their hands and legs . They had then carried them in a car to some unknown place and where they were confined in one room. After some time, the Complainant had realized that his son and his friend were also brought to their room. The assailants had threatened them that they should complete the transaction with Sanjivan Kamble -Applicant-Accused

4] He further contends that, on 27.1.2012, the assailants gave him new clothes to change. At that time, they had removed the blind fold and Complainant could see four unknown persons. Assailants had then threatened the Complainant that, he should sign where ever they direct and if he does not act as per their say, he would be killed. At about 11.30 a.m. they had removed his blind fold and the Complainant realized that, he was at Umbraj in the office of Sub Registrar. The assailants had boarded him from car and he noticed the car No. MH-11-AW-8789 and words "बाळराजे." written on it. He also saw that, Maya Sanjivan Kamble (Co-accused and the wife of the applicant-accused) and other people sitting in another Scorpio vehicle. According to the Complainant, they were informed by the Registrar office that, their term shall come latter on and therefore, the assailants had again put him in the car and were roaming about in the nearby premises. At about 5.00 p.m. they had again returned to the Registrar's office and the signature of the Complainant was obtained on the Sale Deed under the threat of causing hurt to the son. After he has signed the Deed, the assailants had left. The Complainant had met one Bhagwan Narayan Tate and he had disclosed him the entire incidence. The Complainant had then lodged a complaint with the police.

5] I have heard the Advocate for the parties. Advocate Ghadage for the applicant-Accused No. 1 argues that, no case has been made out against the applicant-Accused about he to be involved in the incidence. According to him, the Accused no.1 is serving as a Police Sub-Inspector and is posted at Mumbai. On the day of the incidence, he was on duty at Mumbai. He has attended the Flag Hoisting and thereafter has proceeded on patrolling duty. In support of his arguments, he relies upon the Case Diaries. He submits that the prosecution is relying upon the Call Details Records of the cell phone of the Accused to link the Accused with the offence. As per the Call Details Records, the Accused had contacted to his wife on this cell phone, on the day of the incidence. He argues that the Accused no.1 has spoken to his wife and there is nothing un-natural about it, so as to link the

Accused no.1 with the offence. He submits that, the Accused have time and again paid certain money to the Complainant. The Complainant has, therefore, executed the Sale Deed in favour of the co-Accused. According to the learned Advocate, the Accused No.1 is falsely implicated on pressure from some rival parties. He relies upon the certain case diary entries to show that pressure was exerted upon the investigating Officer to implicate the Accused in this matter. He also draws my attention to the letter dt. 16.2.2012 , written by the Asstt. Police Inspector, Satara Police Station to the Police Superintendent. The sum and substance of his arguments is that, the accused no.1 has been falsely implicated on political pressure. He submits that, there being no evidence against the Accused, he deserves to be discharged.

6] Advocate Sanap-the Special A.P.P. for the State, on the other hand, argues that, if one goes through the entire proceedings, what can be gathered is that, it is the applicant-Accused no.1, who is actually involved in the entire incidence. He submits that, in his complaint dt. 27.1.2012 the Complainant has specifically stated that, he had entered into an oral agreement to sell the suit property for Rs.70,00,000/- with the Applicant-Accused and co-Accused. He, further submits that the balance amount was agreed to be paid at Mumbai. It is submitted that, only the Accused no.1 is resident of Mumbai. All other Accused are residents of Shahapur, Tal.- Karad, Dist.- Satara. He draws my attention to the various documents regarding the transaction, wherein the addresses of the Accused are of village Shahapur, Tal.- Karad, Dist.- Satara. He further submits that, the Accused have time and again alleged to have paid certain amounts to the Complainant and the Complainant to have issued receipts for the same. All these receipts are notarised by a Notary (Co-accused) from Thane. He submits that, the Accused no.1 being a resident of Thane, he had a major role to play in the incidence and was personally present and involved in the entire transaction. Advocate Sanap submits that, on the contrary, it is the applicant no.1, who is the master mind behind the entire incidence. Advocate Sanap has drawn my attention to the Call Detail Records of the cell phone of the applicant-Accused no.1 and his wife, the co-Accused herein. He submits that, admittedly the Accused no.1, who was not present at the time of the incidence, which has taken place on 26.1.2012 and 27.1.2012. He further submits that, Applicant-Accused was throughout in contact with his wife and therefore, it can be inferred that, though he was at Mumbai at the relevant time, he was aware about all the activities relating to the incidence. It is, therefore, submitted that, Applicant-Accused no.1 has conspired with the co-Accused in the entire incidence.

7] It may be stated at the outset that, while we are deciding the present application for discharge, it would not be permissible to sift and weigh the evidence and the question is whether the offence is made out on the basis of the material on record and whether there is any material to proceed against the applicant-Accused.

8] The law regarding conspiracy has been summarised by the Hon'ble Supreme Court in " ***State Through Superintendent of Police, Cbi/sit v/s Nalini 1999 (5) SCC 253 "*** The Hon'ble Apex Court has indicated some broad principles and one of such principles is that, conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence, showing both the existence of conspiracy and its object. It will have to be inferred from the circumstances and the conduct of the Accused.

9] Coming back to the facts of the present case before us, the Complainant has specifically stated that he had entered into the oral agreement with the applicant-accused and the co-accused to sell the lands. Thus the applicant accused seems to have participated in the entire negotiations. The Complainant has gone all the way to Mumbai to collect the amount of earnest money. It is only the accused No 1 who resides at Mumbai. It should also be noted that the alleged receipts of payments of amounts are prepared at Thane. The documents are notarized at Thane. Again it is the applicant No 1 who is resident of Mumbai. It cannot be ignored that the wife of the applicant-accused No 1 is also one of the main accused who was admittedly present at the time of the Sale Deed. The assailants are also said to have threatened the Complainant to complete the sale transaction of the applicant-accused. We have call details records of the cell phones of the applicant accused and his wife and what can be gathered is that on the day of the incidence, he was in touch with his wife. So far as the arguments that on the day of the incidence he was at Mumbai and attending his duty, it is not really disputed. On the contrary, it is only therefore that the prosecution has come up with a case of conspiracy against the applicant accused. The Hon'ble Supreme Court in ***"State of Maharashtra v. Somnatha Thapa (1996) 4 SCC 659"***, while considering provisions of S.227, has held that, " even if Court finds that the accused might have committed offence it can frame charge. At the stage of framing charge probative value of the material on record cannot be gone into. The Apex Court has drawn attention to word 'presume' and held that if there is ground for presuming that the accused has committed the offence a Court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing offence. If on the basis of the materials on record, the Court can come to the conclusion that commission of offence is a probable consequence, case for framing of charge exists. Thus, if the Court feels that accused might have committed offence it can frame charge. It was a case of conspiracy and in that connection it was held that when such offence consists of chain of actions, to bring home the charge of conspiracy, it is not necessary that each conspirator should have the knowledge of what the other collaborator would do.

10] Keeping in mind the above observations and , taking into consideration the above mentioned facts and circumstances appearing on record, it cannot certainly be said that the accusation made against the accused is groundless so as to entitle them to discharge. At this stage it can be said that there is evidence on record which prima facie, indicates the involvement of the accused in the alleged crimes. So far as the arguments that the Investigating Officer was pressurised to implicate the applicant-accused is concerned, assuming he was of the opinion that the applicant-accused was not involved in the incident, we are not bound with his opinion. Taking into consideration all these facts. I am of the opinion that this is not a fit case wherein the applicant accused deserves to be discharged. Hence I pass the following order :

ORDER

The application is rejected.

Date :-15/9/2014 **(V.M. Mohite)**

2nd Additional Sessions Judge,

SATARA.