

Presented on : 17.07.2010  
Registered on : 17.07.2010  
Decided on : 18.06.2016  
Duration : 05Y 11M 01D.

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, SELOO**

*( Before Shri.N.V. Bansal )*

*R.C.C.No.93/2010*

*Exh.No.33*

State of Maharashtra, Through  
Police Station Dahegaon,  
Tah. Seloo, Dist Wardha.

**... PROSECUTION.**

**- VERSUS -**

Wasudeo Jagannath Wankhede,  
Age 58 years, Occu: Agriculturist,  
R/of. Chincholi, Tah.Seloo, Distt. Wardha.

**... ACCUSED.**

**Appearance :** Shri Thakre A.PP for the State.  
Shri G.A. Keche advocate for accused.

**JUDGMENT**

*( Delivered on 18<sup>th</sup> June 2016 )*

1. Accused is prosecuted of an offence punishable under section 420 of Indian Penal Code.
2. Case of prosecution in short is as under, informant Gajanan Sudhkar Aglawe PW1 resident of Junona has given First information Report (Exh.12) at Police Station, Dahegaon on 09.01.2010 (previously 22.11.2009 and 25.12.2009) he is the owner of field S.No.5 situated at mouza Bakalpur, Tah. Seloo, Dist. Wardha which he has purchased from accused by registered Sale Deed Exh 10 dt.16.07.1993. Accordingly, his name was mutated in revenue records. He submits that as accused was obstructing his possession he has filed a Regular Civil Suit 143/2008 in the Court of Civil Judge, Jr.Dn., Seloo which was decided in his favor on

28.01.2009 and it was declared by Court that he is owner and possessor of said property and accused shall not create any obstruction in his possession. In spite of the said fact accused in collusion with Talathi Ajay Bhoyar PW9 has prepared false 7/12 extracts and has sold out said property to Anand Khapre PW8 by registered sale deed (Exh.9) dt. 30.10.2009. He submits that accused was well aware of the fact that he has no right to sell the said property, still he sells the same to Anandrao PW8, without disclosing the fact of the previous sale, and receives the purchase money ₹6,50,000/- for said property and cheats, hence this F.I.R.

3. F.I.R. came to be registered bearing Crime no. 4/2010 at Police Station, Dahegaon. Investigation Officer A.P.I. Songade has carried investigation, recorded statement of witnesses, seized 7/12 extracts registers and seals. I.O has sent the documents for opinion of handwriting expert which was never filed by prosecution during trial. As there was material evidence against accused has filed charge sheet of an offence punishable under Sec 420 of Indian Penal Code before the Court.

4. Charge came to be framed against accused of an offence punishable under Section 420 of Indian Penal Code, 1860 at Exh.5 which was read over the explained to him in Marathi to which he pleaded not guilty and claimed to be tried. Heard both sides. Following points arise for determination, findings thereon for the reasons thereto are as under.

**Points**

**Findings**

1. Whether prosecution proves that accused on 16.07.1993 has executed Sale Deed Exh.10 in reference to field S.No.5 of mouza Bakalpur in favor of informant Gajanan Aglawe PW1?

Yes.

- |   |                       |
|---|-----------------------|
| 2. Whether prosecution proves that accused on 30.10.2009 has executed registered Sale Deed Exh.9 in favor of Anandrao Khapre PW8 in reference of S.No.5 of mouza Bakalpur ? | Yes.                  |
| 3. Whether prosecution proves that accused cheated Anandrao Khapre PW8 and thereby dishonestly induces him to deliver cash amount of ₹6,50,000/-?                           | Yes.                  |
| 4. What order?  | Accused is convicted. |

**Reasons**

5. Prosecution to prove its case has examined informant Gajanan Aglawe PW1 at Exh. 7, he has referred judgment and decree in R.C.S. No.143/2008 dt. 28.01.2009 at Exh.8, Sale Deed between him and accused at Exh.10, Sale Deed executed between accused and Anandrao Khpre PW8 at Exh.9, mutation entries passed in his favor on 13.06.1995 at Exh.11 and F.I.R. at Exh.12.

6. Prosecution has examined Sudhakar PW2 at Exh.14, he appears to be a witness on spot panchanama but has not supported the case of prosecution. Another witness on spot panchanama was present before the Court but A.P.P. has not examined him. Prosecution has examined Prabhakar PW3 at Exh.16 and Sanjay PW7 at Exh.22-A are witness on sample of signature of accused taken by Investigating Officer when accused was in custody. Prabhakar PW3 has not supported the case of prosecution and Sanjay PW7 deposes that on 19.01.2010 police has taken 6 - 6 signatures of accused on different papers in his presence and panchanama Exh.17. As handwriting expert's report is not on record evidence of unchallenged Sanjay PW7 is fruitless.

7. Prosecution has examined Raju Deshmukh PW4 at Exh.18 and Pramod PW5 at Exh.20. They have not supported the case of prosecution

but have affirmed that accused has sold his farm to informant Gajanan PW1 and thereafter informant was in possession of the said farm. Prosecution has examined Vitthal Vaidya PW6 at Exh.21, he is witness over panchanama prepared while seizure of seals of Talathi Bhoyar PW9. He has not supported the case of prosecution and submits that police has not called him for preparation of any type of panchanama at Exh.22.

8. Prosecution has examined Anand Khapre PW8 at Exh.26, he deposes that he has purchased land of accused S.No.5 at mouza Bakalpur in the year 2009 for consideration of ₹6,50,000/- by registered Sale Deed Exh.9. He further submits that when he visited Talathi Bhoyar PW9 in reference to mutation entries and comes to know that the said property was already sold by accused to informant Gajanan Aglawe PW1 and one Dhabarde. As soon as he knows the said fact he met accused and he has executed sale deed of his property at Chincholi in his favor within 15 days. About the said incident police has taken his statement.

9. Prosecution has examined Talathi Ajay Bhoyar PW9 at Exh.27, he deposes that in the year 2009 he was working as Talathi and mouza Bakalpur was under his jurisdiction. He deposes that Anandrao Khapre PW8 visited him along with sale deed Exh.9 for mutation entries over extract of field S.No.5. After perusing the record, he has intimated Anandrao PW8 that accused has already sold out the said property in 1993. hence, entries in his name cannot taken on record. He further deposes that police has called him with records and seal and has taken his handwriting, signature as sample and has seized seal of office. He further deposes that he has not given any 7/12 extract to accused showing him as owner of S.No.5 of mouza Bakalpur.

AS TO POINT NO.1:

10. Informant Gajanan PW1 in his evidence before Court has referred sale deed Exh.10 before the Court and deposed that it was executed by accused in his favor on 16.07.1993. Informant Gajanan PW1 has also produced certified copy of mutation entry Exh 11 wherein his name was mutated as owner of said property on 13.6.1995. Contents in registered Sale deed Exh.10 shows that property bearing S.No.5 situated at mouza Bakalpur was sold by accused area 2.00 H.R. to informant Gajanan PW1 in the year 1993. Moreover, as there was dispute informant Gajanan PW1 has filed a suit in the Court of Civil Judge, Jr.Dn., Seloo for declaration of ownership and injunction wherein accused has filed his say at Exh.22 and has admitted the ownership of Gajanan PW1. Accused has not cross examined informant Gajanan PW1 and has not put up his defence before the Court nor has given any explanation in his statement under section 313 of Cr.P.C. Therefore, upon available evidence on record it is proved by prosecution beyond reasonable doubt that accused has executed sale deed Exh.10 in reference to field S.No.5 of mouza Bakalpur in favor of informant Gajanan PW1 on 16.07.1993. Hence, I answer to point no.1 in affirmative.

AS TO POINT NO. 2:

11. Anandrao PW8 in his evidence before Court deposes that accused by showing 7/12 extract in his name of field S.No.5, mouza Bakalpur has sold the same to him for consideration of ₹6,50,000/- on 30.10.2009 and has identified his signature over sale deed Exh.9. Contents in registered Sale deed Exh.9 show that S.No.5, area 2.88 H.R. is sold by accused to Anandrao PW8 for consideration of ₹6,50,000/- on

30.10.2009. As accused has not cross examined any of the material witness and orally submitted that he do not wish to cross examine any of them. As conduct was not natural order was passes on Exh 1 on 16.5.2016 and Advocate of accused Shri Keche was asked to take note of the order, still he has not applied to recall any of the witness for cross examination. As the evidence is unchallenged it is proved by prosecution beyond reasonable doubt that accused has executed sale deed Exh.9 in reference to field S.No.5 of mouza Bakalpur in favor of Anandrao PW8 on 30.10.2009, hence, I answer to point no.2 in affirmative.

AS TO POINT NO 3 :-

12. Anandrao Khapre PW8 deposes that accused by inducing him to deliver ₹6,50,000/- by pretending himself owner of survey no 5 at Bhakalpur by showing false 7/12 extract filed along with Exh 9 and has cheated him. *Ingredients of offence of cheating are – whoever fraudulently or dishonestly induces the person so deceived to deliver any property and which act causes damage or harm to that person in body, mind, reputation or property, is said to "cheat".* In present case in hand accused has accepted amount ₹6,50,000/- from Anandrao PW8 and has executed Sale Deed Exh 9 in his favor. While executing said Sale deed Exh.9 accused was having full knowledge of the fact of execution of Sale deed Exh 10 by him in favor of informant Gajanan PW1 in year 1993. This knowledge of the fact clearly shows his fraudulent and dishonest intention at relevant time.

13. As per above evidence on record, that relevant time accused by falsely pretending his ownership over field survey no 5 at Bakhalpur has intentionally deceived Anandrao PW8, and thus dishonestly induces him to deliver ₹6,50,000/- as consideration. Accused was well aware of the

fact that he has no legal authority to execute sale deed Exh 9, still he has executed the sale deed only to cheat Anandrao PW8. Here I will like to refer illustration (i) of Sec.415 of Indian Penal Code, 1860 - *A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase money from Z. A cheats.*

14. As per above discussion it is seen that all ingredients of offence of cheating are ie - fraudulent and dishonestly intention to deceive causing damage, harm to Anandrao PW8 in body, mind, reputation or property are proved beyond reasonable doubt by prosecution by leading documentary evidence on record, hence I conclude that prosecution proves that accused cheated Anandrao Khapre PW8 and thereby dishonestly induces him to deliver cash amount of ₹6,50,000/- and answer point no 3 in affirmative.

AS TO POINT NO 4

15. As to findings to point no 1 to 3 accused it is proved beyond reasonable doubt that accused has committed an offence of cheating punishable under Sec. 420 of Indian Penal Code 1860, therefore, he is liable to be convicted. On hearing on quantum of sentence Ld. Advocate for accused absent. Accused was personally asked to which he replied he admits his guilt and is ready to undergo punishment as per orders. Learned APP argued that, offence is serious in nature and is proved by documentary evidence on record. He submits that accused being **Police Patil** at relevant time was having faith of public and he by misusing the post has cheated Anandrao PW8, hence maximum punishment prescribed by law must be imposed on him. Considering the act of

accused and his post as **Police Patil** at relevant time along with his denial for any kind of defence during trial, I proceed to pass the following order.

**ORDER**

1. Accused is convicted of an offence punishable under Sec.420 of Indian Penal Code, 1860 vide Sec.248(2) of Criminal Procedure Code and sentenced to suffer rigorous imprisonment for the term of one year and to pay fine of ₹15,000/- in default of payment of fine he is sentenced to simple imprisonment for the term of 1 month.
2. Accused to surrender his bail bonds.
3. Muddemal property documents be kept along with file and seals and registers seized from talathi be returned to concerned talathi after the end of period for appeal.

Seloo.  
Dt.18.06.2016

(N.V.Bansal)  
Judicial Magistrate, First Class  
Seloo.

**CERTIFICATE**

I affirm that the contents of this PDF file order are same word to word, as per the original order.

Name of Stenographer : G.M.Sheikh  
Court : C.J.J.D. Seloo  
J'ment signed by the  
Presiding Officer on : 18-06-2016  
J'ment uploaded on : 18-06-2016