Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.183 OF 2009

~~Anjali Manohar Hajare~~
(since deceased) through L.R.
Manohar Mahadeo Hajare .. Petitioner
Versus
Mangal Prabhat Gumanmal Lodha and Ors. .. Respondents

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- Mr. Vishwajeet Kapse, Senior Advocate a/w. Mr. Pawan Tiwari, Advocate for Petitioner.
- Mr. Amogh Singh a/w. Mr. Akash Gupta i/b. Jeet Gandhi, Advocates for Respondent Nos.1 to 6.
- Ms. Sangeeta Phad, APP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.
DATE : AUGUST 18, 2026.

P.C.:

1. Heard Mr. Kapse learned Senior Advocate for Petitioner, Mr. Singh learned Advocate for Respondent Nos. 1 to 6 and Ms. Sangeeta Phad, learned APP for Respondent No.7 - State.

2. Criminal Writ Petition No.1839 of 2009 is heard finally today. This Writ Petition assails judgment dated 07.10.2008 passed in Revision Application filed by Accused No.5 challenging order dated 13.12.2007 of issuance of process against Accused persons in Criminal Case No.374 of 2007. By virtue of the impugned order Revision Application is allowed hence being aggrieved, Complainant has filed the present Writ Petition.

3. Mr. Kapse appears for Complainant / Petitioner. Original complainants have all expired in the interregnum. The present Writ Petition is prosecuted by legal representative of one of the Original Complainant.

4. Briefly stated and as argued by Mr. Kapse, original Petitioner along with 4 others (Respondent Nos.2, 3, 4 and 5) were partners of partnership firm called M/s. Harinam Enterprises which was formed on 09.10.1986. Original Complainant and Respondent No.2 filed criminal case against Respondent Nos.1 and 3 to 6 under Sections 420 and 406 of the Indian Penal Code, 1860. Process was issued by order dated 13.12.2007 which was challenged in Revision by Respondent No.1. This Revision Application was allowed. Mr. Singh represent Respondent No.1. Hence the present Petition.

5. Mr. Kapse would vehemently argue that notwithstanding the subsistence of the partnership firm and the said firm having executed agreement dated 18.10.1986 for purchase of properties being several plots of land and the said firm having paid almost 50% payment, the execution of Development Agreement by the other accused persons with Respondent Nos.1 and 6 in March 2003 is an act of fraud played upon the Complainants i.e. original Petitioner and Respondent No.2. He would submit that act of the partners of the partnership firm in transacting the properties with Respondent No.1 and 6 (Accused Nos.5

and 6) to the exclusion of original Petitioner and Respondent No.2 and receiving consideration by them was an act of collusive fraud in depriving the Complainants of their legitimate right. He would submit that the Complainants approached Accused No.5 in 2003 and explained the position to him in view of the stakes of the partners in the partnership firm but to no avail. He would submit that executing Development Agreement dated 01.04.2003 by these other partners (Respondent Nos.3, 4 and 5) of the firm to the exclusion of Complainants deprived them of their legitimate share as partners in the said properties under development. Hence such an act amounted to collusion and cheating.

5.1. He would submit that on 07.12.2005 legal notice was issued to Respondent No.1 (Accused No.5). He would fairly submit that Accused No.5 filed Caveat Application in Civil Court apprehending filing of Civil Suit by Respondent No.1 for seeking injunction. He would once again fairly concede that Civil Suit was not filed by Complainants and criminal complaint was filed in the year 2007 in which process was issued, but in Revision it was set aside.

5.2. The only distinction which he draws to support Petitioners case on the basis of fraud is that Respondent Nos. 3, 4 and 5 were erstwhile partners of the firm along with Petitioner and Respondent No.2 and they executed Development Agreement with Respondent

No.1 purporting to be owners of the subject properties / plots of land situated at Thane by giving a complete go-by to the partnership firm and rights of the other partners namely original Petitioner and Respondent No.2. He would therefore submit that once it is an agreed fact that Petitioner and Respondent No.2 were partners of the firm, then without their consent the other three partners namely Respondent Nos.3,4 and 5 could not have dealt with the firm's properties without their consent and derived any benefit from Respondent No.1. Hence he would submit that reasons given in the impugned judgment dated 07.10.2008 by the Revision Court namely Additional Sessions Judge should not be countenanced and the impugned judgment deserves to be quashed and set aside and order of process dated 13.12.2007 be restored.

6. ***PER CONTRA,*** Mr. Singh on behalf of Respondent No.1 would persuade me to consider the fact that if at all the original Complainants were indeed concerned about any of their substantive rights then after giving legal notice on 07.12.2005, after receiving appropriate reply thereto on 21.09.2006 and after considering contents of the said reply, there was absolutely no need and necessity for them to file a criminal complaint against Respondent Nos.1 and 6.

6.1. He would submit that there is no *prima facie* material placed on record to show that Respondent No.1 is anywhere concerned with the alleged fraud committed by Petitioner. He would submit that *inter se* disputes between the partners of the alleged partnership firm are the real cause of disputes with which Respondent No.1 has no nexus. He would submit that pursuant to receiving the legal notice, Respondent No.1 through his advocate informed Complainants that balance amount shall be deposited by him in Court for safety and convenience if so required and therefore filed a Caveat. He would submit that Respondent No.1 has no privity of contract with original Complainants namely Petitioner and Respondent No.2. He would submit that Original Complainants chose not to file the Civil Suit for injunction and instead embarked upon criminal complaint alleging collusion and fraud when there was complete transparency of the nexus between the 3 partners of the partnership firm and Respondent No.1 and the Development Agreement was duly registered along with registered Power of Attorney. He would persuade Court to consider that alleged dispute emanates from the partnership agreement and it is Complainants' own case that when they purchased these properties / plots of land from third party owners through Agreements to Sale, they made part payment to them only. He would therefore urge this Court to uphold judgment dated 07.10.2008 passed by the Revision Court and dismiss the Petition.

7. I have hard Mr. Kapse learned Senior Advocate for Petitioner, Mr. Singh learned Advocate for Respondent No.1 and Ms.

Phad, learned APP for State at length and with their able assistance perused the record.

8. Admittedly and essentially it is seen that the partnership firm had entered into Agreement to Sale and purchase with regard to the properties / plots of land and had made partial payments only. It is *prima facie* seen that for may years the said Agreements to Sale in regard to the various plots never ever fructified. It is seen that most of the owners of the subject plots thereafter executed separate Power of Attorney in favour of Respondent Nos.3, 4 and 5. It is also seen that these original land owners executed separate Deed of Confirmation with Respondent No.1 *qua* their respective plots on receiving consideration from Respondent No.1 by way of cheques against the said Agreements. What is crucial is that statutory permissions from the Collector to certify and permit the sale transaction were all obtained by Respondent No.1 thereafter in accordance with law, development of the various plots took place by putting up construction of commercial and residential buildings thereon, cooperative housing societies were formed and the construction is now almost complete. All these are therefore essentially civil disputes, if raised, *qua* the substantive rights of the parties in the said lands. *Prima facie*, when such facts are conceived there is no element of criminality whatsoever *qua* Respondent No.1 and 6 when the entire development took place with open eyes. What prevented the Petitioner from approaching the Civil

Court to protect her substantive rights can only be answered by her.

9. What is shocking in the first place is that the alleged partnership firm wherein original Petitioner claims to be a partner is not even registered under the Indian Partnership Act, 1932 when the claim is that partners entered into agreement to purchase properties / plots of land. At the highest, claim of original Petitioner that she is one of the partners *qua* the unregistered partnership firm for breach of any terms of the agreement can therefore lie only against the other partners, if any, and is in the nature of civil dispute. The original Complainants have no nexus with Respondent No.1, therefore if breach of agreement of partnership firm is claimed then their remedy is to file civil suit against the other partners for settlement of accounts and most importantly injunction if interference is objected to by any partner. What is shocking is that Complainant had specific knowledge about the transaction of 2003 namely Development Agreement but for more that 4 years chose not to take any steps. The Revision Court returned specific findings that no element of cheating or breach of contract exists qua Respondent No.1. There is nothing brought on record to show common intention and cheating by Respondent No.1. It is seen that Development Agreement dated 01.04.2003 and Power of Attorney dated 01.04.2003 were all executed and registered documents. What is most surprising is the fact that the original agreement dated 01.04.2003 was executed by the original landlord with HN Enterprises which is not the same as the partnership firm of Harinam Enterprises as Petitioner is attempting to draw similarity of names and is pleading fraud.

10. In that view of the matter and the observations and findings returned in paragraph Nos. 7 and 8 in the impugned judgment dated 07.10.2008, I am of the clear opinion that no interference whatsoever is called upon to interfere in the findings returned by the Revision Court. Consequentially, judgement dated 07.10.2008 is upheld and confirmed.

11. Resultantly, Writ Petition is therefore dismissed.

12. Writ Petition is dismissed and disposed of.

[MILIND N. JADHAV, J.]

Ajay

RAVINDRA MOHAN AMBERKAR

Digitally signed by RAVINDRA MOHAN AMBERKAR Date: 2026.08.18 11:31:59 +0530