

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL (PVT) NO.47 OF 2015

M/s. Sneha Builders ... **Applicant**

V/s.

The State of Maharashtra & Anr. ... Respondents

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Mr.S.K.Keswani, Advocate for the Applicant.

Mr. Deepak Thakre, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 6TH FEBRUARY, 2015

P.C.

1. The applicant had prosecuted the respondent No.2 on the allegation that the respondent No.2 had committed an offence punishable under Section 138 of the Negotiable Instrument Act, 1881. The Metropolitan Magistrate, 59th Court, Kurla, after holding a trial acquitted the respondent No.2. Being aggrieved by the said order of acquittal, the applicant is, by the present application, seeking special leave of this Court to file an appeal from the said acquittal.

2. Heard Mr.Keswani, the learned counsel for the applicant. I have gone through the application and annexures

thereto, which include a copy of complaint. I have carefully gone through the impugned Judgment.

3. For the sake of convenience and clarity, the applicant shall be hereinafter referred to as 'the complainant', while the respondent No.2 as 'the accused'.

4. The complainant's case, in brief, is that the son of the accused had purchased a flat i.e. Flat bearing No. 202 in Saiprasad Buiding at Sion from the complainant, who is the Builder. That, the agreed consideration for the flat was paid and the possession thereof was also handed over to the son of the accused. The son of the accused failed and neglected to pay the amount towards interest and extra amenities that had been provided by the complainant and when a demand notice in respect of the amount of the interest and the cost of amenities provided was made, the accused issued two cheques in favour of the complainant - one in the sum of Rs.7,00,000/- and the other in the sum of Rs. 10,00,000/- - both dated 3rd March, 2012. These cheques were deposited together and as they bounced, the complainant prosecuted the accused.

5. The learned Magistrate observed firstly, that there was absolutely nothing to show that any interest/penal interest was agreed to be paid by the son of the accused to the complainant.

The Magistrate observed that, in fact, the agreement reflected the price of the flat to be only Rs.75,00,000/-, but actually some additional amount in cash was taken by the complainant. This additional amount of cash was Rs.50,50,000/-, and the complainant duly accepted in the cross-examination of having received this amount. The Magistrate also referred to a Clause in the agreement whereby the *complainant was liable* to pay interest in the event of handing over of the possession getting delayed. The Magistrate observed that there was a delay of five months in handing over the possession.

6. The conclusion arrived at by the Magistrate that the complainant had failed to show that the amount of the cheques in question was due and payable to the complainant, and that the cheques had been given in discharge of a legally enforceable debt or other liability, is proper and correct. The Magistrate, in his well reasoned Judgment, appears to have taken into consideration all the relevant aspects of the matter and arrived at a proper conclusion.

7. There is no merit in the application.

8. Leave refused.

9. The application is rejected.

(ABHAY M. THIPSAY J.)