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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 507 of 2015

Mr Gangaram R. Bathija

..Appellant.

Versus.

Galaxy Corporation and others

..Respondents.

Mr Sandip Velkar a/with Sunita Barne, Advocate for the Appellant.

Mrs Anamika Malhotra, APP for the State.

Mr Girish Kulkarni i/by M.G. Shaikh and Karan Kadam for the Respondents.

CORAM : A.R.JOSHI,J

DATE : 7th September, 2015

P.C.

1. Heard rival arguments on this appeal challenging the judgment and order of acquittal dated 15th October, 2012 passed by the learned Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai.

2. At the threshold, it must be mentioned that earlier when the present appeal was filed before the Court and when notices were directed to be issued against the respondents, later on it was decided that at the time of admission itself the present appeal can be expeditiously heard and disposed of. Under that premise, today the present appeal is taken for expeditious hearing by consent of parties.

3. Present respondent nos. 2, 3 and 4 were the Trustees of

respondent no.1. Respondent no.3 is presently no more. As such presently the only contesting respondent nos. 1, 2 and 4 i.e. no.1 Trust, and no. 2 and 4 Trustees. Names of respondent no. 4, 5 and 6 are already deleted as per this Court order dated 25.4.2013. Without going into much details as to the deletion of those names and other respondents, suffice it to say that allegedly the entire transaction between the appellant and his daughter is with respondent no.2 / Trustee of respondent no.1 and as such according to the present appellant / original complainant, the grievance is against respondent no. 2 and 4 being the Trustees of respondent no.1. In short, the grievance is regarding not giving the possession of two flats bearing nos. 401 and 402 respectively to the appellant and his daughter by the present contesting respondents, though apparently, the agreements for sale of said office premises were entered into between the parties, the agreement dated 8th July, 1989 is between the present appellant and the Trust and agreement dated 12th July, 1989 is between his daughter.

4. The present respondent nos. 1, 2 and 4 who were the earlier accused no. 1, 2 and 4 were acquitted of the offence punishable under section 13 read with section 14 of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 and also acquitted of the offences punishable under sections 409 and 420 read with section

109 of IPC. The order of acquittal was passed on a private complaint lodged by the present appellant. Said complaint was registered as case No.48/S/99. The complaint was initially lodged against the total seven accused persons, including present respondent nos. 1, 2 and 4. Apparently, during the trial itself original accused no.3 another trustee of the Trust died and in fact no process was issued against original accused nos. 5, 6 and 7.

5. In short, it is the case of the present appellant that he and his daughter entered into two agreements on the respective dates as detailed above with respondent no.1 Trust represented by respondent no.2 Trustee and the total consideration was about Rs.17 lakhs for both the flats. Allegedly, according to the appellant, the said total consideration was already paid and definitely prior to the registration of one of the agreements in the year 1997. It is the case of the complainant, present appellant that the original accused no.2 present respondent no.2 was to purchase certain property from the original owner and after construction on the said property the office premises on 4th floor were agreed to be given to him and his daughter. However, till the year 1997 original complainant, present appellant did not bother the respondent Trustees as he was knowing that there was some dispute with the tenants of the property. However, subsequently, he learnt that the dispute was over and building was constructed and as such he approached the respondent no.1 Trust by

writing a letter some time in October 1997. It was apparently the first letter of demand asking for the said office premises. Allegedly this first letter was not replied. Hence, second demand letter dated 1st December, 1997 was sent by the appellant. It was also not replied and hence the Advocate notice was sent on 12.1.1998 and apparently this notice was replied vide reply dated 24th January, 1998. It is also the case of the complainant/present appellant that sometime in the year 1997 original accused no.5 made a representation that the appellant and his daughter may accept the office premises on the fifth floor of the building instead of claiming the premises Nos.401 and 402. Apparently, there was no document produced on record on behalf of the complainant/appellant. This request was negated by the appellant and his daughter and then the private complaint was lodged in the year 1999. Apparently, prior to lodging of the private complaint, admittedly, there are two civil suits initially preferred before the High Court and presently they are transferred to the Court of City Civil Court, Greater Bombay and they are pending. It is not certain as there is no mention in the complaint or in the evidence of the complainant that which reliefs were claimed in the said suits. Suffice it to say that said suits are pending and which are concerning the same flat no.401 and 402.

6. During the trial of the complaint case, after evidence of the present appellant, charge was framed by the trial Court on 20.1.2009

mainly for the offences under Sections 420 and 409 of IPC and for the offences under Sections 13 and 14 of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

7. During the trial, complainant examined himself and also examined his daughter as witness no.2. No other witness was examined. Apparently, the document produced before the Court Exhibit P1 is the xerox copy of the agreement dated 8th July, 1989, between the present appellant and respondent no.2. Exhibit P2 is the letter written by the complainant to accused no.2 and which was sent on 23rd October, 1997 asking for the possession of respective office premises No.401 and 402. Exhibit P3 is the agreement executed in the year 1997 registered with the Sub-Registrar of Assurances and Exhibit P4 is the notice issued through Advocate and reply given on behalf of the respondents. Exhibit P5 is actually Exhibit 1 i.e. the complaint and verification. This is the admitted position of the documentary evidence produced before the trial Court. It is the factual position that the trial Court had dealt with the aspect of the agreement between the parties and came to the conclusion that Exhibit P1 is only the xerox of the original agreement and the said xerox copy has not been proved either being a secondary evidence or for that matter to establish any understanding between the parties. Though much is argued by the learned counsel for the appellant on

the agreement of 1997 registered with Sub-Registrar of Assurances, surprisingly enough though the said agreement came to be registered with the Sub-Registrar of Assurances and which is Exhibit P3, same is not at all signed by any of the respondent no. 1 to 4 i.e. original accused no. 1 to 4. It is totally one sided agreement and though accepted for registration by Sub-Registrar of Assurances, definitely cannot confer any right or title with respect to any of the flats no.401 and 402 in favour of the appellant and his daughter. This aspect has been dealt in detail by the trial Court while coming to the conclusion as to failure on the part of the complainant/appellant to establish the commission of offences, if any, under the provisions of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act,1963.

8. When the above aspect was brought to the notice of the learned counsel for the appellant, he placed much reliance on the original agreement executed in the year 1989 between the parties and ultimately argued that at least that agreement should have been honoured by the respondents and as such definitely it is a case of the offences under sections 420 and 409 of IPC. Needless to mention that for the offence punishable under section 420 of IPC, there should be an intention to defraud or cheat the party at the initial inception of the transaction. The trial Court had also considered this aspect and came to the conclusion as to non establishment of any understanding

between the parties in July, 1989 with respect to any of the office premises. This is mainly so on account of the production of xerox copy of the original agreement before the trial Court. Though much is argued on behalf of the appellant that the said initial agreement was required to be honoured, nothing was brought before the trial Court that the entire consideration as mentioned in any of those two agreements of 1989, has been paid to the respondent no.1 Trust.

9. Taking into consideration the substantive evidence and documentary evidence produced before the trial Court, it came to the conclusion as to non establishment of the offences charged and as such passed an order of acquittal. In the opinion of this Court, within the rights of this Court to interfere with the impugned judgment and order of acquittal, it cannot be said that the order of trial Court is perverse in nature so as to be interfered with and to come to the different conclusion than that arrived at by the trial Court.

10. In the result, the present appeal is accordingly dismissed and disposed of.

(A.R.JOSHI, J.)

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED ORDER.