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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 3510 OF 2010**

Our Lady of Salvation Church and Ors. ... Applicants

Versus

Rational Arts & Press Pvt. Ltd. & Anr. ... Respondents

Mr. Vijay Pradhan, Sr. Advocate i/by Ms. Deepa Bajaj for the applicants.

Mr. Yusuf Iqbal Yusuf Neville Maira i/by Yusuf & Associates for respondents.

Smt. A.A. Mane, A.P.P. for the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : JULY 07, 2015**

P.C.

Admit. Heard finally.

2. The applicants are aggrieved by the order passed by the learned Magistrate in Criminal Case No. 40/SW/2010 summoning the applicants to answer charge for the offence punishable under section 420 read with 34 of Indian Penal Code. The applicant nos. 2 to 11 are members of Our Lady of Salvation Church, Dadar (West), applicant no.1. The respondent no.1 Rational Art & Press Pvt. Ltd. are builder and developers.

3. There was property belonging to applicant no. 1 known as Plot No. 951 and 951A. It was alleged before the Magistrate by respondent no. 1 that both the plots were agreed to be sold to respondent no. 1 by the applicants. The plot No. 951A was sold by registered sale deed. However, plot no. 951 has not been transferred in the name of respondent no. 1 by the

applicants as the property rates in the area have gone up. It is alleged that initially it was agreed that the said plot will be transferred in the manner plot no. 951A had been transferred. However, the applicants developed ill intention and they induced respondent no.1 to part with an amount of Rs. 25 lacs by way of earnest money and Rs.20 lacs by way of donation to the Church. It is alleged that the applicants backed out from the promise and as such they have committed the offence punishable under section 420 read with 34 of Indian Penal Code.

4. In the first place, an objection is raised by the learned counsel for respondent no.1 that since the order of issuance of process can be challenged by way of filing revision application, this application under section 482 is not maintainable. I would have considered this argument but for the pendency of this application for five years. As the application is pending in this court since 2010 and therefore, I am not inclined to entertain the preliminary objection. Suffice it to say that this court is not prevented from exercising its powers under section 482 of Code of Criminal Procedure despite the order being revisable.

5. Coming back to the merits of the case, learned counsel Mr. Pradhan submits that the public notice inviting offers published in Free Press Journal made it absolutely clear that the sale will be subject to permission of Charity Commissioner and other Authorities. It is stated by Mr. Pradhan that respondent no. 1 was communicated that Arch Bishop had refused to grant permission for sale of plot 951A. Learned counsel for respondent Mr. Yusuf has brought to my notice that the consent for the sale of Pot No. 951A was obtained from Arch Bishop after sale deed was registered. The registered sale deed was executed in the month of November, 2006 and permission of Arch Bishop was obtained in October, 2007. It is submitted that in the

present application that similar procedure could have been adopted in respect of plot No. 951 also.

6. However what the trial court was required to examine in the present case was as to whether there was inducement on the part of the applicant. Section 420 reads as under :

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

7. It is therefore, necessary to establish element of cheating which is defined under section 415 of the Indian Penal Code. Cheating is defined as under :

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.”

8. As such the use of deceitful means is a condition precedent for cheating. This inducement shall be fraudulent or dishonest. The fraudulently has been defined by section 25 of the Indian Penal Code. Dishonestly has been defined in Section 24 of Indian Penal Code. Sections 24 and 25 read as under :

"24. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

"25. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

9. The reading of the entire complaint does not in any way indicate that any act was done by the applicant dishonestly or fraudulently. The question which requires to be examined is as to why Arch Bishop could not have granted sanction after execution of the sale deeds. It is contended by Mr.Yusuf that the applicants could have executed the sale deed and thereafter they could have applied for sanction of Arch Bishop as it was done in the case of plot no. 951A. This by itself does not indicate that the applicants were dishonest or they had acted in any fraudulent manner. They wanted to go by the order of the Arch Bishop.

10. As far as earnest money is concerned, it was offered to be returned to respondent no. 1. Learned counsel for the applicants states that the applicants are ready to repay the donation also. It is not denied that donation of Rs. 20 lacs was taken. In this regard, one may refer to public notice issued by the applicants which clearly stated that the applicants reserved their right to reject any offer and to refund earnest money without any interest to the offerers whose offers had not been accepted. It is thus clear that it was made clear to respondent that the offer given to the respondent could be rejected and in that event, the respondent would be entitled for the money paid by him to the applicants. Since the applicants are ready to refund the earnest money and donation amount, the question of any element of cheating does not appear to be present there in the case. In my view, therefore, the prosecution pending against the applicants in the court of Metropolitan Magistrate, 5th Court, Dadar, is required to be quashed.

11. The proceedings pending against the applicants for the offence punishable under section 420 read with 34 of Indian Penal Code vide Criminal Case No. 40/SW/2010 pending in the court of Metropolitan Magistrate, 5th Court, Dadar shall stand quashed. Bail bonds of the applicants, if any, shall stand cancelled.

(JUDGE)