

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

A.B.APPLICATION NO.1818 OF 2015

Manish Harjivandas Shah & Anr.	..Applicants
<i>-Versus-</i>	
State of Maharashtra	..Respondent

Mr. Mahesh Waswani i/b. Anushree Kulkarni for applicants
Ms. S.D. Shinde, APP for State.
Mr. Ijaz Nakhavi for complainant.

CORAM : A.S.GADKARI, J.

DATE : 5th December 2015.

P.C.

1] The applicants are apprehending arrest in C.R.No.295 of 2015 registered with D.B.Marg Police Station, Mumbai under section 471, 420 read with 34 of the IPC.

The complainant Smt. Babusha Chapshi Shah has filed F.I.R. dated 13th October 2015 alleging in brief that the present applicants represented her that they are the owners of the property near Sena Bhavan, Shivaji Park, Dadar, Mumbai and they wanted to redevelop the said property. They further showed the redevelopment plan and informed her that if she invests money in the said project, the

applicant will give her a flat admeasuring 685 sq.ft. having two bedrooms and induced her to part with initial amount of Rs.75 lakhs. On the inducement of the applicants, the complainant and her relatives paid the amount of Rs.1.52 Crores in total to the applicants. The applicant No.2, thereafter, executed a promisory note to that effect and gave an allotment cum confirmation letter dated 9th July 2015. It is the precise case of the complainant that despite substantial payment of amount, the applicants did not deliver the possession of the agreed flat in the said project to the complainant. After making enquires with the applicants about the flat or money the applicants bluntly refused to repay the amount or to hand over the flat as was promised. In these circumstances, the complainant lodged the said F.I.R. dated 13th October 2015 with the police.

2] The learned Counsel for the applicants submitted that as a matter of fact the alleged documents which have been produced by the complainant are forged documents. He further contended that his clients have repaid an amount of Rs.26 lakhs to the complainant and in these circumstances, it is apparent that there was no

intention to cheat the complainant. Learned Counsel for the applicant in support of his contention has relied upon two decisions of the Supreme Court reported in A.I.R. 1973 S.C. 326 in the case of (State of Kerala Vs. A. Pareed Pillai and Anr.) and A.I.R. 2009 S.C. 3191 in the case of (Dalip Kaur & Ors. Vs. Jagnar Singh and Anr.) I have carefully gone through the said judgements. In view of the facts and circumstances of the present case, the reliance placed by the learned Counsel for the applicant on the said decisions is totally misplaced.

4] A plain reading of the F.I.R. makes out a clear case under section 471 read with 420 of the IPC. It is further apparent that the applicants herein in a systematic manner induced the complainant to part with the said substantial amount and has committed the offence of cheating. It is, therefore, necessary for the I.O. firstly to recover the documents from the applicants which were shown to the complainant pretending that the property belongs to them and the alleged re-development scheme presented to the complainant. It is also necessary for the investigating agency to see the trail of money which, after accepting from the complainant, has been utilised by

the applicants for their personal use or benefit. Even otherwise, a plain reading of F.I.R. discloses that the offences alleged is of very serious in nature. The investigating agency must be given a free hand to unearth the truth behind the crime.

5] In view of the above, the applicants do not deserve any sympathy from this court. The application is rejected. At this stage, the learned Counsel for the applicant prays that interim relief granted by this court on 1st October 2015 to continue for a period of two weeks. Learned APP vehemently opposes the same. Taking into consideration the facts and circumstances of the present case as mentioned here in above, the prayer for continuation of interim relief is rejected.

6] In view of rejection of this application, APPP No.1012 of 2015 does not survive and is dismissed as being infructuous.

(A.S.GADKARI, J)