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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 356 OF 2003

Babanrao s/o Laxman Phatke,
Age: 30 years, Occu: Business,
R/o Kharwandi, Tq. Newasa,
Dist. Ahmednagar

..PETITIONER

VERSUS

The State of Maharashtra & anr.

..RESPONDENTS

Mr V. B. Jadhav, Advocate, Advocate for petitioner;
Mr R. V. Dasalkar, Addl. Public Prosecutor for respondent No. 1

CORAM : N.W. SAMBRE, J.

DATE : 26th April, 2016

ORAL ORDER :

The respondent paid amount of Rs. 15,000/- towards the part consideration for purchase of shop, particularly from the petitioner Builder. Since the claim was not honoured, he filed criminal complaint for offences punishable under Section 3 and 4 (1) (2) read with Section 13(1) of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

2. The learned Chief Judicial Magistrate, Ahmednagar has issued process by an order dated 12th August, 2002 and framed charge against accused on 10th March, 2003 as present petitioner has admitted receipt of the advance of amount of Rs. 15,000/-.

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3. Against the said order of framing of charge, Criminal Revision No. 169 of 2003 was preferred before the learned 4th Adhoc Additional Sessions Judge, Ahmednagar, which came to be dismissed by an order dated 13th August, 2003. As such present writ petition.

4. Learned Counsel appearing on behalf of petitioner submits that the offence as has been alleged against petitioner cannot be made out, particularly for following reason :

It is claimed that, there was a violation of Sections 3, 4 and 13 of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act by the complainant himself as he has deposited consideration to the extent of less than amount of Rs. 20% of the total consideration. According to him, as such, order in question is itself illegal. The material on record, which is formed to be the basis for issuance of process and framing charge does not satisfy the ingredients of the section.

5. Learned Additional Public Prosecutor opposed the prayer for quashing of proceedings and charge as according to him, there was enough material on record to proceed against accused.

6. With the assistance, I have perused the order dated 10th March, 2003, framing charge against present petitioner. Learned Magistrate has

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noted that the petitioner has accepted that he had received an amount of Rs. 15,000/- towards first installment for sale of shop from the complainant and as such, proceeded for framing charge. Once petitioner has accepted that the amount was received towards part consideration for sale of shop, in my opinion, the claim that 20% amount of total consideration is not paid by the complainant under the provisions of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, and hence the Act cannot be invoked against him, cannot be accepted.

7. In the above background, in my opinion, no case for interference in extra-ordinary jurisdiction, is made out. Writ Petition fails and stands dismissed.

(N.W. SAMBRE, J.)

sjk