

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.633 OF 2018

Rashmin R. Shah

... Petitioner

V/s.

Rajkumar M. Sorewala & Anr.

... Respondents

Mr. Disha Shah I/by Vijay Upadhyay for the Petitioner.

Mr. Mukesh Modi for Respondent No.1.

Mr. A.R. Patil, APP for the Respondent State.

CORAM : A.S.GADKARI, J.

DATE : 25th SEPTEMBER 2018

P.C.:

1. By the present petition under Article 227 of the Constitution of India, the petitioner has questioned the correctness of Order dated 14.08.2017 passed below Exh.1 in C.C.No.142/SW/2005 by the learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai, rejecting the application for discharge preferred by the petitioner under Section 245 of the Code of Criminal Procedure and Judgment and Order dated 11.01.2018 passed in Criminal Revision Application

No.1047/2017 by the learned Additional Sessions Judge, Greater Mumbai, confirming the order dated 14.08.2017.

2. Heard the learned counsel for the petitioner, the learned counsel for Respondent No.1 and the learned APP. Perused the record.

3. The petitioner is the original accused in C.C.No.142/SW/2005 filed by Respondent No.1 under Section 420 of the Cr.P.C. It is the case of Respondent No.1 that, the petitioner represented himself to be a Director of Lithos Estate Developers Pvt.Ltd. and extracted Rs.23,70,000/- towards sale of flat bearing No.1102 on the 11th Floor in the building known as Kent Garden situated at 51st Road, TPS-III, Borivali (West), Mumbai and after accepting the said amount did not deliver possession of the said premises/flat to Respondent No.1. The petitioner also did not return the said amount to Respondent No.1. It is the prosecution case that, the petitioner by making false representations induced Respondent No.1 to part with the said huge amount of money and by not delivering possession of the said premises, committed an act of cheating against him. Respondent No.1 lead evidence before charge as contemplated under Section 244 of the Cr.P.C. The petitioner filed an application under Section 245

of Cr.P.C. for his discharge from the case, which has been rejected by the impugned order dated 14.08.2017 by the learned Magistrate.

4. The learned counsel appearing for the petitioner vehemently opposed that, the ingredients as contemplated under Section 415 of the Indian Penal Code are lacking while instituting the complaint, as there is no averment in the complaint and/or the evidence led by Respondent No.1 before framing of charge pertaining to the dishonest intention to commit an act of cheating since inspection. She further submitted that, transaction in question is of civil nature and as Respondent No.1 failed to comply with his part of obligation, the petitioner could not handover possession of the suit property to him within the agreed period. She further submitted that, the company of the petitioner namely Lithos Estate Developers Pvt.Ltd. has not been joined as an accused in the complaint, and therefore, the complaint suffers with non-joinder of necessary party. She submitted that, in the premise, the Trial Court has committed an error in not discharging the petitioner.

5. The facts mentioned in the complaint have been briefly narrated in the forgoing paras. A plain reading of the complaint would made it clear that, the petitioner since inception of transaction

with dishonest and malafide intention induced the Respondent No.1 to part with the said Rs.23,70,000/- under the pretext of selling flat and subsequently did not handover possession of the said flat to Respondent No.1, nor returned the money within reasonable period. Thus, *prima facie* it is apparent that, the petitioner since inception of the transaction had intention to commit an act of cheating against the Respondent No.1.

6. In view thereof, this Court is of the view that the Trial Court in its order dated 14.08.2017 passed below Exh.1 and the Revisional Court by its Judgment and Order dated 11.01.2018 passed in Criminal Revision Application No.1047/2017 have not committed any error either in law or on facts.

7. Petition is devoid of any merits and is accordingly dismissed in limine.

(A.S.GADKARI, J.)