

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.215 OF 2014

JITENDRA C. LAKHANI

)...APPLICANT

V/s.

HARESH M. JOSHI AND ANOTHER

)...RESPONDENTS

Mr.Karan Bhosale a/w. Mr.Vipul Singh i/b. NDB Law, Advocate for the Applicant.

Ms.Mallika Ingle, Advocate for Respondent No.1.

Mrs.Anamika Malhotra, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 6th JULY 2018

P.C. :

1 Charge for the offence punishable under Section 420 of the Indian Penal Code came to be framed against the respondent/original accused but ultimately on trial, he came to be acquitted of this offence. Hence, this is an application for leave to appeal.

2 Heard both sides. On behalf of the applicant, it I argued that there was registered agreement to sell the apartment and part consideration of Rs.2.50 lakh was paid by a cheque. Ultimately, it was found that the subject flat was occupied by somebody else. This, according to the complainant, amounts to cheating by the builder.

3 The learned counsel for the respondent/original accused argued that evidence of the prosecuting party is not establishing ingredients of the offence of cheating, as intention since inception is not reflected.

4 Prima facie, it is seen that, there was an agreement to sell the subject flat and the respondent had received part consideration of Rs.2.50 lakh, which constitutes substantial amount when the sell comprised of Rs.6 lakh is concerned. Even if the apartment was purchased for the purpose of investment, it is with the hope that the purchaser could sell it out for substantial

higher price, after lapse of some period. That does not entail the builder to transfer the apartment to somebody else, despite agreement to sell standing in favour of the complainant. Same transaction can give cause of action for civil suit and also for criminal proceedings and it all depends upon the nature and quality of evidence.

5 Prima facie case for consideration is made out and therefore, the order :

ORDER

- i) Leave, as prayed, is granted.
- ii) Memo of Application be treated as Memo of Appeal on making necessary amendments by the learned counsel for the applicant.
- iii) Leave to amend, to that extent, is granted.
- iv) Admit.
- v) Ms.Ingle waives notice for respondent no.1.
- vi) The learned APP waives notice for respondent no.2/State.
- vii) Call for Record and Proceedings.

viii) In lieu of action under Section 390 of the Code of Criminal Procedure, respondent no.1 to execute P.R.Bond in the sum of Rs.15,000/- before the learned trial court, within a period of four weeks from today.

(A. M. BADAR, J.)

Arti
Vilas
Khatate

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by Arti Vilas
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2018.07.06
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