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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3137 OF 2017**

Jayant Chintamani Tipnis

.....Petitioner

V/s.

The State of Maharashtra

....Respondent

Mr. Balasaheb Deshmukh for the petitioner.

Mr. Y. Y. Dabke APP for the State.

CORAM : NITIN W. SAMBRE, J.**DATE : MARCH 8, 2018.****P.C.**

This petition is against the order of refusal to discharge passed in case no. PW/34/2006. The facts necessary for deciding the present writ petition are as under.

2 One Baburao Ramishte claiming to be the Chairman, Mathadi Kamgaar Sahakari Grihnirman Sanstha Maryadit (hereinafter referred as 'parent society' for the sake of brevity) lodged a complaint on 03/08/2000 alleging as under.

3 He claimed to be the Chairman of the parent society for last almost 40 years. According to him, parent society was formed in 1988 and the State Government vide order dated 21/01/2006 allotted in all 58 acres of land at Chembur, Wadala. It is further claimed that Chintamani, Siddhivinayak and Chinmay are proposed Co-operative Housing Societies were accepting booking amount from the prospective purchasers of the tenements to be constructed on the said land allotted by the Government. It is further claimed that petitioner is one of the accused who has registered about 100 to 150 members and conducted ground breaking ceremony on 29/01/2006. It is further claimed that petitioner though is not office bearer or not in law authorized to deal with the land of the parent society, has collected the amount, conveyed ground breaking ceremony under the banner of three proposed societies. Though the land in question which was allotted to parent society was never permitted to be used by such proposed societies.

4 The petitioner who is named as accused no. 6 preferred an application for discharge in the said proceedings before the learned

Metropolitan Magistrate 49th Court, Vikroli who vide its order dated 24/03/2017 rejected the said prayer which was confirmed in Revision Application No. 376 of 2017 vide Judgment and Order dated 15/07/2017 by learned Revisional Court. As such this petition seeking discharge.

5 Shri. Deshmukh, the learned counsel for the petitioner has strenuously urge that there is delay in prosecuting the trial as the trial is pending for framing of charge since 2006. According to him, the same can be pressed into service for seeking discharge of the applicant/accused. In addition, the submission of the present petitioner is though he is named as accused in the crime in question, there are no statements of witnesses or any material evidence so as to infer, satisfaction of the necessary ingredient for offence of cheating. He submits that the petitioner has never received any benefits from any of the members or has not received any amount from the proposed societies. He submits that he being an architect by profession was discharging is professional duty of extending consultation qua development of the land in question. He would

further urge that parent society has failed to pay his professional fees for which he is already initiated the suit for recovery. According to him, so as to evade said financial liability of payment of professional fees, he is falsely implicated in the offence in question. So as to substantiate his contention of discharging his professional duty, and that he cannot be blamed to have committed an offence in question, he would draw support from the Judgment of this Court in the matter of **Manish Dosai Barot Vs. State of Maharashtra [(2015) 2 Mh.L.J. (Cri.) 714]** particularly paragraph 17 of the said Judgment. In addition, the learned counsel rely upon the judgment of the Apex Court in the matter of **Binod Kumar & Ors Vs. State of Bihar and Anr. [2014 (0) AIR (SC) 53359]** and **Samir Sahay @ Sameer Sahay Vs. State of U.P. And Another [2017 0 AIR (SC) 5327]**. In addition to above it is further submitted by the petitioner that parent society to whom the land in question was allotted, was formed by two persons namely Baburao Ramishte and Sahebrao Shelar. According to him, there is consent decree drawn in favour of both these parties who were permitted to use land in equal proportion to be developed for

members. He would then submit that having not collected amount from any of the prospective members or had not made any promise, there is no question of making out an offence under section 420 of the Indian Penal Code.

6 *Per contra* the learned APP opposed the claim and would urge that the proposed three societies as are reflected in the invitation card at page 25 Exhibit 'D' are shown to be part of the parent society. According to him, present petitioner extended consultation for planning the development on such property and addressed prospective members to invest in the society by obtaining loan, if required. He would then invite attention of this Court to contents in F.I.R., statements of witnesses namely Jayesh Bhanushali and other documents which were seized during the investigation so as to demonstrate that there is material available against the petitioner to connect him to the crime in question. He would urge that the submissions made by the petitioner are in form of his defence and cannot be appreciated at this stage of the proceedings. He sought dismissal.

7 Considered rival submissions.

8 The professional qualification and the fact that the services of the petitioner were hired by the parent society is not a fact in dispute. While extending specialized professional knowledge, amongst other, functions performed by the present petitioner as submitted by the learned counsel is, to approach planning authority for getting appropriate sanctions.

9 Perusal of F.I.R. along with the invitation card which demonstrate that present petitioner was one of the chief guest, who has addressed the gathering of people, appealing to book the tenement by obtaining loan, is seized and placed on record. The said invitation card demonstrate that function was organized by the parent society and there were three proposed societies namely Cintamani, Siddhivinayak & Chinmay who were participators in the said function. The fact remains, it is the petitioner who has claimed that these proposed societies are proposed and formed by Sahebrao

Shelar whose interest the petitioner is representing. This fact is not disputed by the learned counsel for the petitioner. Apart from above, there are statements of witnesses particularly Jayesh Bhanushali which speaks of the petitioner attending the function and appealing the members to apply for loan of 2.5 lakhs so that they can apply for tenements in question. The fact as could be borne out from the record that the land in question was allotted to the parent society and so far as proposed societies are concerned, they are no way concerned with the parent society or the allotment of land in question.

10 In the professional capacity of the petitioner he would also require to ascertain the title and then to proceed with the planning. What could be borne out from the record is, such land of the Government to the parent society is distributed by virtue of consent order in between two office bearers of the parent society, as if they are individual owners of the same and the petitioner has proceeded to extend his professional expertise knowledge of planning over the such property.

11 The other documents which are seized also refers to involvement and participation of the applicant qua the crime in question.

12 Apart from above, it is required to be noted that this Court in the matter of **Manish Barot** [*cited supra*] had dealt with criminal liability of a professional like that of a Chartered Accountant while dealing with the prosecution under section 420 of the Indian Penal Code. So far as the facts of the present case are concerned, investigation as on date depicts that there is sufficient material to frame charge against present petitioner.

13 Apart from above, the law laid down by the Apex Court in the matter of **Binod Kumar** [*cited supra*] also deals with the requirement of the offence under section 420 of the Indian Penal Code. The learned counsel for the petitioner has tried to convince this Court that the ingredients of section 420 of the Indian Penal Code are not made out as this petitioner has never promised nor utilized the amount for his personal gain, he is entitled for discharge. It is worth

to mention here that the investigation carried out till date as narrated herein above such as consent decree, participation of petitioner in extending expertise consultation to both groups of the parent society, his knowledge that the land is allotted to the society and not to the group of members, his attending function of ground breaking ceremony and making appeals, proposed society which has no connection whatsoever to the land which was allotted by the State Government, still shown to have been formed by one of the group so as to attract booking, appeal made by the petitioner for loan to be obtained for tenements to be booked, in my opinion, *prima facie* satisfies the requirement of framing of charge against the petitioner.

The defence of the petitioner/accused cannot be appreciated at this stage.

14 In the aforesaid background, in my opinion, no case for discharge is made out. Petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]