IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5157 OF 2018

MOHANLAL BISANLAL JAIN)...PETITIONER

V/s.

GANGADHAR P. ROHERA AND ANOTHER)...RESPONDENTS

WITH

CRIMINAL WRIT PETITION NO.5195 OF 2018

HUKUMICHAND JAIN AND ANOTHER)...PETITIONERS

V/s.

GANGADHAR P. ROHERA AND ANOTHER)...RESPONDENTS

Mr.Zaman Ali i/b. E.A.Sasi, Advocate for Petitioners.
Mr.A.R.Kapadnis, APP for the Respondent – State.
Mr.Aniesh Jadhav, Advocate for the Respondent No.1.

CORAM : A. M. BADAR, J.

DATE : 19th DECEMBER 2019

<u>ORAL JUDGMENT</u> :

1 Heard. Rule. Rule returnable forthwith. Heard finally.

2 By these petitions, petitioners, who are accused in Criminal Case No.1010 of 2007 pending on the file of the learned Judicial Magistrate, Vashi, Navi Mumbai, are challenging the order dated 15th September 2018 passed by the learned revisional court thereby rejecting their revision petition bearing nos.80 of 2013 and 81 of 2013. By these revision petitions, they had challenged the order passed by the learned trial Magistrate on 12th August 2011 directing issuance of process against them for offences punishable under Sections 406, 409, 420 read with 34 of the Indian Penal Code.

3 Heard the learned counsel appearing for the petitioners at sufficient length of time. By taking me through the contents of complaint, it is argued that the complaint is not reflecting any material to show connection of Mr.R.A.Lobo with accused persons. Similarly, it is contended that all accused persons are in trade of diamonds and therefore, it is highly improbable that they would deal with a transaction of land for the purpose of its development for commercial purpose. It is further

argued that there is delay in filing the complaint which makes it clear that the averments are an afterthought. The amount of Rs.8 lakh, allegedly paid by the complainant to accused Rakesh Jain, was towards loan for the purpose of doing business of export of diamonds. It is further submitted that the amount was paid by the wife of the complainant. The complaint is not reflecting mensrea and accused no.1 was not at all concerned with the transaction in question.

4 The learned counsel for the complainant opposed the contention by pointing out report of police submitted under Section 202 of the Code of Criminal Procedure to the trial Magistrate. He further drew my attention to the order passed by this court on 29th August 2008 in Criminal Writ Petition No.906 of 2008.

5 As the order directing issuance of process is impugned in the instant petition, it needs to be put on record that the learned trial Magistrate is required to examine the matter from

the angle as to whether there are sufficient grounds for proceeding against accused. It is not expected of the learned trial Magistrate to examine the material in order to determine whether the same is sufficient for recording conviction or not.

6 In the case in hand, process is issued for offences punishable under Sections 406, 409, 420 read with 34 of the Indian Penal Code. In the light of this factual background, if averments made in the complaint are perused, then according to the complainant, all accused persons approached him in the year 1994 through a broker named R.A.Lobo and represented him that accused are having a plot of land admeasuring 171.4 gunthas at Panvel, which they wanted to dispose off. It is further averred in the complaint that as the complainant was interested to develop the said plot, he gave an advance of Rs.5 lakh on 12th December 1994 to Mr.R.A.Lobo and that amount was transferred by Mr.Lobo to accused persons. It is further averred in the complaint that then there were several meeting between the complainant and accused persons at the office of Advocate D.M.Harish & Co. The

complaint further contains pleadings that on instructions of accused no.1 Hukumichand Jain, a cheque of Rs.8 lakh came to be issued by the complainant in the name of Mr.Rakesh Jain – accused no.2. According to the complainant, Mr.Lobo had forwarded an amount of Rs.5 lakh to accused no.3 Mohanlal Jain. The complainant has also relied on letter dated 30th January 1997 sent by Mr.Lobo. Ultimately, it is contended by the complainant that despite investing money with accused persons, the plot of land was not transferred and it was reflected that he was cheated by accused persons. The complaint alleged that despite taking lakhs of rupees from him, it was revealed that accused persons have started business in the name and styled as M/s.Rakson Realty.

7 As noted in foregoing paragraphs, the complaint prima facie reflects commission of offences alleged against accused persons. Grounds raised in the complaint are sufficient to proceed against accused persons. In this view of the matter, no fault can be found in the impugned order passed by the revisional court.

8 The petitions are, therefore, dismissed.

(A. M. BADAR, J.)