

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.640 OF 2018

1) SHARAD NAGURAO LOMTE)
2) KUMAR YASHWANT NIKAM)...APPLICANTS

V/s.

1) SANGRAM TUKARAM DANGAT)
2) THE STATE OF MAHARASHTRA)...RESPONDENTS

Mr.Satyavrat Joshi, Advocate for the Applicant.

Mr.Aniket Nikam i/b. Mr.VN.Arote, Advocate for Respondent No.1.

Mr.S.V.Gavand, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 3rd FEBRUARY 2020

ORAL JUDGMENT :

1 This is an application under Section 482 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C. for the sake of brevity) by applicants/original accused nos.2 and 3 in Regular Criminal Case No.2032 of 2017 pending on the file of the learned

Judicial Magistrate First Class, A.C.Court, Pune, for quashing and setting aside the order of issuance of process for offences punishable under Sections 420, 467, 468, 471, 506 read with 34 of the Indian Penal Code passed on 30th October 2017.

2 Rule. Rule made returnable forthwith. Heard finally by consent of parties.

3 The learned counsel for applicants/original accused nos.2 and 3 drew my attention to the complaint as well as the Verification Statement of the complainant and argued that there is no iota of evidence for issuance of process for offences punishable under Sections 467, 468 and 471 of the Indian Penal Code. The learned counsel further argued that the applicant/accused no.2 was not even the partner of the partnership firm. According to the learned counsel for applicants/accused nos.2 and 3, there is no averment in respect of applicant/accused no.2 even in the Verification Statement of the complainant. Section 420 of the Indian Penal Code requires intention to cheat and that is also not

reflecting from the material which was before the learned trial Magistrate. With this, it is submitted that the impugned order needs to be quashed and set aside.

4 By drawing my attention to statement of Nitin Yanpure examined during the course of inquiry under Section 202 of the Cr.P.C., the learned counsel for respondent herein/original complainant argued that accused no.1 and applicant/accused no.2 Sharad Lomte were doing the business of development of property together and in respect of that construction work, the respondent herein/original complainant had even satisfied bills of material supplied. Therefore, according to the learned counsel for the respondent herein/original complainant the application deserves to be rejected.

5 I have considered the submissions so advanced and perused the material placed before me. Respondent herein/original complainant Sangram Dangat averred in his complaint that original accused nos.1 and 2 had entered into

Development Agreement for developing a plot of land belonging to Pokale family. As original accused nos.1 and 2 were short of funds, they contacted the respondent herein/original complainant and requested him to supply funds for development of the plot of land belonging to Pokale family. The complainant/respondent herein in his complaint contended that he accepted the proposal and that is how, a partnership firm came to be constituted which included the complainant as a partner. Name of that partnership firm is stated to be "The Kumar Associates." Further averment in the complaint is in respect of contribution of funds by the complainant/respondent herein for construction of apartments at the site. It is averred by the complainant/respondent herein that it was agreed that profit and loss of the partnership firm shall be shared equally between the accused no.1 and the complainant/respondent herein. However, he is cheated by accused persons by selling apartments which were allocated to him without giving full payment of construction amount to the complainant/ respondent herein. The complainant/respondent herein further averred that when he visited the site, original accused nos.1 and 3 abused him

and threatened to kill him. He is cheated by not paying 50% of the profit amount. Seven apartments which were allocated for him were even not given to him by accused persons.

6 The learned trial Magistrate conducted inquiry under Section 202 of the Cr.P.C. and during the course of that inquiry, statement of Nitin Yanpure came to be recorded. This statement shows that accused nos.1 and 2 were doing the work of development of the plot belonging to Pokale family and the complainant/respondent herein had made payment of bills of supply of building material. That apart, there seems to be Deed of Partnership on the record of the learned trial Magistrate.

7 Considering the material so collected during the inquiry, prima facie case for issuance of process for offences punishable under Sections 420, 506 read with 34 of the Indian Penal Code is certainly made out. However, there is no iota of evidence as far as offences punishable under Sections 467, 468 and 471 of the Indian Penal Code are concerned. Therefore, the

impugned order to that extent, is certainly unjustified and illegal.

In the result, the following order :

ORDER

- i) The application is partly allowed.
- ii) The order directing issuance of process against accused persons for offences punishable under Sections 467, 468 and 471 of the Indian Penal Code is quashed and set aside.
- iii) Rest of the order of the learned trial Magistrate is maintained.
- iv) Rule is made absolute in above terms.
- v) Needless to mention that all observations in this order are prima facie in nature and shall have no bearing on the trial.

(A. M. BADAR, J.)