

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

**CRIMINAL APPLICATION NO.399 OF 2019  
IN  
CRIMINAL REVISION APPLICATION NO.223 OF 2017**

Rajendra Sadashiv Chandrachud ..Applicant  
V/s.  
The State of Maharashtra & Ors. ..Respondents

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Mr.Mahesh Vaswani a/w Ms.Dharini Nagda, Ms.Shreya Tiwari i/by  
Ms.Maya Dave for the Applicant.

Mrs.M.R. Tidke, APP for the Respondent-State.

Ms.Vandana Jaisingh a/w Ms.Archana Jaisingh for Respondent No.2  
and for the Applicant in APPR No.399 of 2019.

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**CORAM : C.V. BHADANG, J.**

**DATE : 12<sup>th</sup> MARCH 2020**

Nilam  
Kamble

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by Nilam Kamble  
Date: 2020.03.13  
14:00:01 +0530

**PC.**

1. This is an application under Section 391 of Cr.PC. for production of additional evidence at the stage of the Revision Application.

2. The applicant along with the co-accused has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and has been accordingly sentenced, which order has been confirmed by the learned Sessions Judge in

appeal, against which the applicant has filed Criminal Revision Application No.223 of 2017. It is in this Revision Application that the present application is filed for production of additional evidence.

3. The applicant has sought production of a Memorandum of Understanding ('MOU' for short) dated 07<sup>th</sup> April 2010 which is executed between the Directors/ co-accused along with copy of the e-mail dated 19<sup>th</sup> August 2019 and 28<sup>th</sup> August 2019. The email's are at Exhibit-B collectively.

4. During the course of the hearing at bar the learned counsel for the applicant on instructions states that the applicant shall not press for the production of the two emails which are collectively marked as Exhibit-B. Thus, the relief sought is restricted to the production of the MOU. The learned counsel for the applicant submitted that for want of proper legal advice, the MOU could not be produced before the learned Magistrate during the course of the trial. It is submitted that the application for production of the MOU was filed before the learned Sessions Judge. However, the learned Sessions Judge decided the same along with appeal, which is not permissible. In order to show that the production of the MOU is relevant. The learned counsel for the

applicant has relied upon paragraph Nos.4b,5,8 and 11 of the MOU which read thus :-

*“(4b) In consideration of the above, the Party of the Other Part shall also be entitled to appropriate area @ Rs.18,000/- per sq.ft. on saleable area on each drawing being made by the Party of the One Part as mentioned Clause 4a above.*

*(5) The Party of the Other Part along with Investors shall infuse capital upto Rupees Two Hundred and Ten Crores only into the SPV to KIPL including the money to be paid for the settlement of the interested parties/claims and on the necessary Development Agreement/ Sale Deed to be executed in favour of the SPV or KIPL.*

*(8) In the event of the Party of the Other Part introducing Investors in the project then such Investors shall be allotted proportionate shares in the SVP or KIPL until such time as the Investors investments are repaid along with the agreed IRR.*

*(11) The party of the other part shall be responsible for the day to day management of the project and arrange for finance to meet to costs of construction and all such costs for arranging the said finance shall be borne and paid by the SVP or KIPL.”*

5. The contention is that the applicant who was one of the directors and the signatory to the subject cheque was not entrusted with the day to day Management of the Company namely Kusumavati Infrastructure Pvt. Ltd. (‘KIPL for short) and therefore the applicant cannot be held liable for the dishonor of the cheque.

6. The learned counsel for the respondent states that the respondent/complainant is not a party to the MOU and in any event no reason has been shown for not producing the MOU before the learned Trial Court. It is submitted that even otherwise the MOU does not show that the applicant was not entrusted with the day to day Management of the Company i.e. Kusumavati Infrastructure Pvt. Ltd.

7. I have carefully considered the submissions made.

8. It is necessary to note that the complainant is not a party to the said MOU which is executed amongst the accused. According to the learned counsel for the applicant the applicant is described as a “party of the one part” while the co-accused “party of the other part” who were responsible for the day to day Management of KIPL. A bare perusal of the paragraphs which are reproduced above, on which reliance is placed by the learned counsel for the applicant, it cannot be accepted that the clauses relate to the day to day Management of KIPL. *Prima facie* it appears that the clauses relate to the certain dealings which the “party of the other part” had undertaken with the third parties/investors. Thus I do not find that the MOU has any bearing or relevance insofar as the

issue of the dishonor of the cheque is concerned. None the less the applicant can always demonstrate that he was not entrusted with the day to day Management of KIPL on the basis of the material which is already on record. In that view of the matter the Criminal Application is dismissed.

9. By consent of parties Criminal Revision Application 223 of 2017 to stand over to 2<sup>nd</sup> April 2020 for 'final disposal'.

**C.V. BHADANG, J.**