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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 306 OF 2015

VIPUL JAMNADAS HARIYANI ...Applicant.

V/s

VINAY GANESH GOSAVI & ORSRespondentS

Mr. Kishor Bhatia for the Applicant.

Mr. Ajay Patil, APP for the Respondent/State.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 13, 2021

PC.:-

1] The complainant in proceedings for prosecution under Negotiable Instruments Act has approached this Court seeking grant of leave to appeal.

2] The case of the Applicant is as under:-

3] City and Industrial Development Corporation (CIDCO) floated a

Scheme of allocation of 12.5% of the land acquired to the land owners.

4] Before allocation of such land to the land owners by CIDCO, Applicant through one Bachewar who has an agreement with the land owners, entered into a contingent contract of purchasing rights after allocation of the said 12.5% of the land. Respondents who were interested in the said property approached the Applicant and issued cheques worth Rs 35 lakhs i.e. 7 cheques of Rs 5 lakhs each towards consideration which were dishonoured. As such, this prosecution.

5] Counsel for the Applicant has strongly urged that the cheques were issued for legally enforceable debt i.e. assignment of rights accrued through agreement dated 5/4/2010. No objection was executed with the Respondents/Accused on stamp paper dated 11/11/2011. He would claim that since cheques were issued in favour of the Applicant, there is presumption under Sections 118 and 139 of the Negotiable Instruments Act and that being so Court below has failed to consider the same and acquitted the accused.

6] I have considered the aforesaid submissions.

7] Fact remains that original land owners agreed to pass on the rights in land to the extent of 12.5% to be allocated by CIDCO to one Bachewar from whom Applicant has purchased said rights and parted the same to the Respondents-Accused for valid consideration. The procedure adopted is, such land, if to be developed, CIDCO will enter into tripartite agreement with the land owners and developer.

8] Fact remains that till date, document allocating 12.5% of developed property by CIDCO in view of deed of assignment is not placed on record. As such, what can be noticed is, agreement entered into between the parties appears to be contingent one. On the date of issuance of the cheques in favour of the Applicant, Applicant has very restrictive right i.e. in case the property is released, he will have right over such property. Admittedly, till this date, no such assignment is given by CIDCO in favour of the original owners. That being so, it cannot be inferred that there is legally enforceable debt for which cheques were issued. As such, the order impugned is very much justified. Application as such stands rejected. Leave refused.

9] However, before parting, it is worth to clarify that Applicant shall be at liberty to enforce his right through civil proceedings.

10] Application stands disposed of accordingly.

(NITIN W. SAMBRE, J.)