

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 114 OF 2022

Rinku Hemandas Jeswani .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Mr. P.P. Dalvi for the applicant.
Smt. Rutuja Ambekar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 11th JULY, 2022

P.C:-

1 Heard learned counsel for the applicant and perused the order releasing the accused on bail in CR No-I 283 of 2021 registered with Ulhasnagar Police station for the offence punishable under section 420, 409, 406 read with section 34 of IPC.

2 On perusal of the order, it can be seen that the informant formed a partnership firm in the name of “M/S. SHREE BALAJI DEVELOPERS” for the purpose of carrying out the business of construction and development of Real Estate. The applicant who used to purchase the plumbing material from the shop of the informant was joined as a 50 % partner in the scheme named as ‘Paradise’ project near Kalyan. The accusations leveled

against the present applicant are in respect of the applicant selling flat out of the said scheme and avoiding income tax and stamp duty by executing the documents by suppressing the actual sale of consideration and the allegation is how he defrauded the income tax department and misappropriated the balance amount.

3 In the agreement between the parties, there is a specific mention of an arbitration clause, which prescribe that all disputes and questions whatever, which shall arise either in continuation of the partnership or afterwards between the partners or their representative, touching the deed or the construction shall be governed by the Arbitration and Conciliation Act.

4 Instead of the availing said remedy which is available, the present applicant/ the informant prefer to institute the said proceeding, resulting invocation of sections 406, 409, 420 read with 34 IPC.

In the wake of the decision of the Hon'ble Apex Court in the case of Velji Raghavji Patel Vs. State of Maharashtra, 1965 (2) SCR 429 it is settled position of law, as far as partners are concerned, section 406 cannot be attracted.

5 Perusal of the impugned order passed by the Additional Sessions Judge, Kalyan, would reveal that instead of availing mechanism provided under the deed of partnership, a short cut was adopted by approaching the police. Recording that the nature of dispute is civil and only a cloud is created by giving it

a criminal facade, the applications were granted and the applicants/ the accused were admitted to protection.

I do not see any perversity in the said order since the Learned Judge has realised the conspectuous of matter, being civil in nature and the remedy being worked out in the partnership agreement itself, he do not deem it necessary to record a prima facie case in his favour and held that the custodial interrogation is not necessary, as the case is based on the documentary evidence. The accused was thus released on bail.

4 In the wake of the aforesaid, the present application, seeking its cancellation is dismissed.

(SMT. BHARATI DANGRE, J.)