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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 412 OF 2022

Mehul M. Parekh

...Applicant

Versus

1. The State of Maharashtra
2. Manish Navratan Munot

...Respondents

Mr. Seoul Shah for the Applicant.

Mr. K.V.Saste, A.P.P for the Respondent-State.

Ms. Kausar Banatwala i/b Mr. Tushar Goradia for the Respondent No.2.

**CORAM : REVATI MOHITE DERE &
R. N. LADDHA, JJ.**
DATE : 15th NOVEMBER, 2022

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives

notice on behalf of the respondent No.1–State. Ms. Kausar Banatwala waives notice on behalf of the respondent No.2.

3. By this application, preferred under Section 482 of the Criminal Procedure Code, the applicant seeks quashing of the FIR bearing C.R. No. 73 of 2020 registered with the MRA Marg Police Station, Mumbai, subsequently, transferred to the EOW Unit-III, Mumbai and re-numbered as C. R. No. 5 of 2020, for the alleged offence punishable under Section 420 of the Indian Penal Code. Quashing is sought on the premise, that the parties have amicably settled their dispute.

4. Perused the papers. According to the respondent No.2 (original complainant), he got acquainted with the petitioner at RNA Builders Office at Chembur. The respondent No.2 has alleged that the petitioner visited his office i.e. Mass Construction, situated at Fort, Mumbai and in the meeting, disclosed that he had purchased a the property, at Village Chembur, Mumbai, for a total consideration of

Rs.8.20 Crores, out of which, he had already paid Rs.7 Crores to the land owner i.e. M/s Natvar Properties Pvt. Ltd. According to the respondent No.2, to complete the said transaction, the petitioner wanted a hand loan of Rs.1.20 Crores and hence, the petitioner requested him to give the said amount at the rate of 21% interest per annum compounded annually. Accordingly, the respondent No.2 transferred the said amount i.e. Rs.1.20 Crores, from his company's bank account to the petitioners account on 23rd February, 2016. The respondent No.2 has further alleged that in February, 2016, the petitioner again visited his office and showed him a copy of the Agreement for Sale, wherein it was stated that the petitioner has agreed to buy the said property for a total consideration of Rs.7 Crores.

5. It is alleged that the petitioner again requested for a hand loan of Rs.1.50 Crores, on similar terms and conditions, as done earlier. It is also alleged that the petitioner was willing to English mortgage the said property for the same. Accordingly, the respondent

No.2 transferred an amount of Rs.1.50 Crores from his company's bank account to the petitioner's account. The respondent No.2 has stated that the petitioner informed him that he had completed the transaction by executing a Deed of Conveyance dated 5th March, 2016, by duly registering the same. The petitioner has further alleged to have requested for another hand loan of Rs.2 Crores from the complainant, pursuant to which, the respondent No.2 again transferred the said amount from his company's account to the petitioner's account on 17th March, 2016 and subsequently, executed a Deed of Mortgage for a hand loan of Rs.4.70 Crores. Respondent No.2 has alleged that the petitioner issued a possession letter with respect to the said property, in favour of the respondent No.2. According to the respondent No.2, on 30th March, 2016, the petitioner again demanded a hand loan of Rs.70 lakhs against the mortgaged property, pursuant to which, the respondent No.2 again gave a hand loan of Rs.5.40 Crores against the said property to the petitioner.

6. The respondent No.2 has alleged that when he demanded the interest amount of Rs.2.17 Crores and odd, the petitioner was unable to pay the said interest amount and hence, the petitioner requested to purchase the said property for a total consideration of Rs.9 Crores. Accordingly, a Sale Deed was executed between the respondent No.2 and the petitioner, on 18th October, 2017. The respondent No.2 has alleged that the property in respect of which, the Sale Deed was entered into by the applicant, did not stand in the applicant's name, nor was in his possession, and as such, the applicant cheated him. The respondent No.2 has alleged that when he demanded the said amount, the applicant did not return the same. Hence, the respondent No.2 lodged the FIR as against the applicant alleging the aforesaid offence.

7. Learned APP informs that after investigation, the police have filed chargesheet as against the petitioner, for the alleged offences punishable under Sections 420, 465, 467 etc. of the Indian Penal Code.

8. It appears that in the interregnum, Natvar Properties Pvt. Ltd. filed a commercial suit in this Court, being Commercial Suit No. 415 of 2019, as against the petitioner and Mass Constructions, of which, the respondent No.2 is a partner. The said suit was amicably settled between the parties and accordingly, Consent Terms were entered into between them. The Consent Terms are at 'Exhibit – C' at page 25 of the application. As per the said Consent Terms, the respondent No.2 – partner of Mass Constructions, has given his no objection for quashing of the said case initiated at his behest as against the applicant.

9. Learned Counsel for the respondent No.2 has tendered an affidavit of the respondent No.2 dated 14th October, 2021, duly notarized before the Notary, giving his no objection to the quashing of the said FIR. Since the monies were given from the account of Mass Constructions, of which, the respondent No.2 was a partner, we directed all the partners of Mass Constructions to file their Consent Affidavit, for giving their no objection for quashing of the said

complaint. Accordingly, the learned Counsel for the respondent No.2 has tendered an Additional Consent Affidavit of all the partners of Mass Constructions, including the respondent No.2 dated 9th November, 2022, duly notarized before the Notary. The said Additional Consent Affidavit, signed by all the partners of Mass Constructions, is taken on record.

10. The respondent No.2 is present in person. On questioning, he re-iterates what is stated by him in his affidavit as well as in his Additional Consent Affidavit tendered by him. He does not dispute having entered into Consent Terms with Natvar Properties Pvt. Ltd. and the applicant - Mehul Parekh in Commercial Suit No. 415 of 2019. The respondent No.2 has been identified by her Counsel. Learned Counsel for the respondent No.2 has tendered a photocopy of the Aadhar Card of the respondent No.2, duly attested by him. The same is taken on record and the original Aadhar Card is verified by the learned APP.

11. Considering the nature of dispute, the amicable settlement between the parties, the Consent Terms entered into between them, the affidavit and the Additional Consent Affidavit of the respondent No.2 and the judicial pronouncements in this regard, there is no impediment in allowing the application.

12. The application is accordingly allowed and the FIR bearing C.R. No. 73 of 2020, registered with the MRA Marg Police Station, Mumbai, and subsequently, transferred to the EOW, Unit-III, Mumbai and re-numbered as C.R. No. 5 of 2020 and consequently, proceeding arising therefrom, are quashed and set-aside.

13. The applicant to deposit a sum of Rs.1,00,000/-, with the **Mumbai Police Welfare Fund bearing Account No. 465010100008693, IFSC No. UTIB0000465**, as costs. The said costs to be deposited within four weeks from today.

14. Rule is made absolute in the aforesaid terms. Application is disposed of accordingly.

15. It is made clear that the aforesaid C.R. / proceeding are quashed, subject to the applicant depositing the said costs.

16. Matter to be listed for recording compliance of the said order of deposit on **20th December, 2022.**

17. All concerned to act on the authenticated copy of this order.

R. N. LADDHA, J.

REVATI MOHITE DERE, J.