S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1831 OF 2022

Satish Anant Pandharkame and Anr. .. Petitioners

Versus

State of Maharashtra and Anr. .. Respondents

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- Mr. Ashish Dubey for the Petitioners
- Mr. J. P. Yagnik, APP for the Respondent - State

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CORAM : S.S.SHINDE &
MILIND N. JADHAV, JJ.

DATE : JUNE 09, 2022.

ORDER (PER :MILIND N. JADHAV, J)

1. Heard Learned Counsels appearing for the Parties.

2. The present Petition is filed for quashing and setting aside the FIR being FIR No. 200 of 2022, registered against the Petitioners under Sections 406, 420 read with 34 of the Indian Penal Code, 1860 ("**IPC**") and other consequential reliefs.

3. Briefly stated the case of the prosecution is as follows, the Petitioners were owners of two flats in the building known as Alura in Lodha at Worli, Mumbai. These two flats are Flat Nos. 5201 and 5202. The Respondent No. 2 purchased these two flats from the Petitioners by registered Agreements for Sale, both dated 03.12.2020 for the amount of Rs. 4,01,28,500/- and Rs. 4,59,71,500/- respectively. The

Respondent No.2 and her husband were already owners of one flat in the said building and since they knew the Petitioners through the building Whatsapp group, they negotiated with the Petitioners for the purchase of the subject flats. It is the Prosecution's case that the Petitioners asked Respondent No. 2 not to deduct the statutory TDS payment which was deductable from the aforementioned consideration when the same was paid over to the Petitioners. The Petitioners repeatedly demanded certain amounts for clearing the dues in respect of the subject flats before registering the Sale Agreements.

4. According to Respondent No. 2, after execution and registration of the Agreements, the Petitioners undertook to provide Exemption Certificates from the Income Tax Authorities relating to exemption of deduction of TDS amount on the entire consideration amount of the said flats. The Petitioners convinced Respondent No. 2 to hand over two cheques for the amount of Rs. 96,03,500/- and Rs. 99,46,500/- against the balance consideration reserved for deduction of TDS on the total consideration paid for the purchase of the aforesaid two flats. The cheques were handed over.

5. Since the Petitioners did not provide the Exemption Certificates in respect of the TDS claimed for which the two cheques were handed over, there was a dispute between the parties. It is the case of Respondent No. 2 that the Petitioners have failed and neglected to provide the Exemption Certificates despite the Petitioners having received the entire consideration amount and promised to give the same. On the contrary, the Petitioners have claimed that there is no liability towards payment of income tax on the sale of the subject flats and therefore no TDS is deductable or has been deducted and paid over to the Income Tax Department. The Petitioners have remained adamant on their demand for releasing the balance consideration withheld by the Respondent No. 2 towards the alleged TDS liability. It is seen that possession of one flat, i.e., Flat No. 5202 has been handed over to the Respondent No. 2, whereas, possession of the second flat, i.e., Flat No. 5201 is yet to be handed over, in view of the dispute relating to the TDS amount/ Exemption Certificates between the parties. However, the Respondent No. 2 has alleged that the Petitioners have not given possession of both the flats and the TDS certificates.

6. We have perused the Petition and the various annexures thereof. We have also perused the FIR. The relevant Clause is Clause 1(f) and 1(g) in the two Sale Agreements. For the sake of convenience Clause 1(g) is reproduced herein :

> "(g) *All the Payments as made is always subject to deduction of TDS as applicable as per Income tax Act provision. It is made very clear by the Party of the first part to the Party of the second Part that the TDS shall be deducted only in the amount of final payment which shall be released to the Party of the first Part and not in the amount of payment of consideration which was made on execution of this sale agreement, payment made to the Promotors and builders and for the payment made to the Bank. The certificate of TDS shall be given by the Party of the second Part to the Party of the first Part."*

7. From the bare reading of the above clause it is clear that the TDS was to be deducted by the Respondent No.2, but in the present case the parties had decided that the Respondent would pay the TDS amount to the Petitioner. From the clause in the agreement, it is seen that the amount of TDS has to be deducted as agreed upon by the parties and paid over to the Income Tax Department and the TDS certificates has to be handed over by Respondent No. 2 to the Petitioners. That apart it is also seen that there is still a dispute of payment of balance amount of Rs.1,95,50,000/- between the parties linked to the TDS amount. There is also a civil dispute pending between the parties.

8. The above clause though is very clear in as much as the Respondent No. 2 is required to pay the TDS amount, despite which on the insistence of the Petitioners, the Respondent No. 2 handed over two cheques as stated hereinabove to the Petitioners, pertaining to TDS payment. However it is alleged that the said two cheques before they could be encashed were withdrawn and payment was stopped by Respondent No. 2. If the contents of the aforementioned clause in the Agreements is considered, the payment of TDS is the liability of the Respondent No. 2, i.e., the Party of the second Part. However, if the Petitioners had insisted on payment of TDS, then the Petitioners will have to provide the Exemption Certificate to the Respondent No. 2 in view of their agreement. We state that our observations are *prima facie* in nature.

9. In view of the above discussions and findings, we are of the considered opinion that the FIR / Report does not call for any interference at this stage.

10. Hence, the Writ Petition stands dismissed.

[MILIND N. JADHAV, J.] **[S.S.SHINDE, J.]**

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2022.06.15 10:26:30 +0530