

IN THE COURT OF THE IV ADDL. C.M.M AT BANGALORE.

DATED THIS THE 9th DAY OF JANUARY 2020

PRESENT

Smt. Reshma Jane Rodrigues,
M.Com., L.L.M.
IV A.C.M.M. Bangalore

CC 18841/2017

Complainant : State by High Grounds PS

V/s.

Accused : A2: Prakash R. 54 Yrs.,
S/o Late S.M.Raju,
R/o Kabeera Nilaya, No.325/A,
18th cross, Ideal Home Township,
R.R.Nagar, Bengaluru.

**ORDER ON APPLICATION FILED BY ACCUSED NO.2
U/S.239 OF CR.P.C.**

The counsel for accused No.2 has filed application u/s.239 of Cr.P.C. for discharge of accused No.2.

2. The same is brought to the notice of learned Sr.APP who has filed objections to the said application.
3. Perused the application and the reasons assigned and heard both sides.

4. The following points arise for my consideration :

1) Whether accused No.2 has made out sufficient grounds for his discharge in view of Sec.239 of Cr.P.C. ?

2) What order ?

5. My finding on the above points are :

Point No.1 : In the negative.

Point No.2 : As per the final order for the following :

REASONS

6. Point No.1 : The charge sheet is filed against the accused for the offences punishable under section 406, 420, 506 read with section 34 of IPC. It is the case of the prosecution that the accused No 1 is the GPA holder and he has entered into a JDA with the owners for construction of residential apartment situated at Corporation division No 78 measuring 12,773 sq feet property No.21 New No.19, Melville House, Palace cross road, Bangalore. The accused between September 2004 to 22/06/2007 called CW1 to CW3 to the office and stated about the JDA and GPA and entered into a sale agreement by obtaining Rs.6 lakhs in advance and also obtained the loan amount obtained from SBI and later did not execute the sale deed and kept on giving reasons and did not register the sale deed. Later on the request of

CW1 to CW3 the accused No1 got sold their flat to accused No 2 and paid part consideration amount and without paying the balance amount have colluded with each other and without canceling the earlier sale agreement directly got registered the property in favour of accused No.2 without bringing it to the knowledge of the complainant and CW2 and CW3 and thereby committed the offences under section 406, 420, 506 r/w section 34 of IPC.

7. In the regard the learned counsel for the accused has filed discharge application and one of the grounds urged in the application is that the complainant himself was not interested in the purchase of the flat and did not make any further payments apart from paying Rs.6 lakhs. It is also urged that the complainant has signed as a consenting party to the sale agreement executed in favour of accused No.2 and the sale agreement in favour of complainant also was cancelled. It is also urged that the amount obtained by bank loan and paid to the accused is towards flat No.101 and not towards purchase of flat No.104. The learned counsel for the accused has also produced the copies of the sale deed and the agreement and the registered sale deed.

8. However these aspects have to be adjudicated in the course of trial. The charge is already framed in this case and none of the grounds urged are subsequent events which have taken place after

framing charge and none of these grounds were submitted at the time of hearing before charge. In addition, the actual amounts paid to both or either of the accused and the amounts to be obtained and the knowledge and consent for the registration of the sale deed are all aspects to be elicited in the course of trial. At this stage only the charge sheet materials and documents will have to be taken into consideration. The materials placed along with the charge sheet prima facie disclose commission of criminal offences. It is not a case that the charges levelled against the accused are totally groundless and that the accused can be discharged at the threshold without going for trial. In addition the documents produced cannot be taken into consideration at this stage. Hence for the said reasons Point No.1 is answered in the negative.

9. Point No.2 : For the forgoing reasons, I pass the following :

ORDER

The application filed by counsel for
accused No.2 u/s.239 of Cr.P.C. is rejected.

(Dictated to the stenographer, transcribed and computerised by her, corrected by me and then pronounced in open court on this the 9th day of January 2020)

IV Addl.CMM, Bengaluru.

17.12.2019
State by Sr.APP
Accused
For orders

09.01.2020
State by Sr.APP
Accused
For orders

ORDER

(pronounced in open court vide separate order)

The application filed by counsel for
accused No.2 u/s.239 of Cr.P.C. is rejected.

IV Addl.CMM, Bengaluru.