

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 5863 of 2019**

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KAMLESHBHAI MEGHJIBHAI GODANI
Versus
STATE OF GUJARAT

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Appearance:

MR SHAKEEL A QURESHI(1077) for the Applicant(s) No. 1,2,3

for the Respondent(s) No. 2

MS MD MEHTA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 16/03/2022**ORAL ORDER**

1. Heard learned Advocate Mr.Shakeel Qureshi on behalf of the applicants and learned APP Ms.Mehta on behalf of the respondent State.
2. By way of this application, the applicants seek for quashment of the FIR bearing C. R. No.I-219 of 2018 registered with Sarthana Police Station, District Surat for the offences punishable under Section 406, 420 and 114 of IPC.
3. Upon hearing the learned Advocates for the parties, it appears that the grievance of the complainant is that neither the applicants herein return the earnest money to the complainant, nor did the applicants transfer the agreement to sell in favour of the complainant.
 - 3.1. It appears that the applicants had entered into an agreement with the co-accused one Hasmukhbhai Haribhai @ Harshadbhai and whereas the same was for purchase of certain plots in the Scheme floated by the applicants. It appears that it was the said co-accused who had paid earnest money to the tune of Rs.1,86,00,000/- and not the applicant. Furthermore, agreement also appears to have been

entered with the co-accused. It also appears that there is a cancellation agreement between the applicants and the said Hasmukhbhai, who had in the first place entered into the agreement with the applicants. The agreement of cancellation *inter alia* refers to inability of the said Harshadbhai to pay the remaining amount, and therefore, the first agreement dated 22.8.2016 is stated to be cancelled and whereas it is also provisioned that the earnest money of Rs.1,86,00,000/- would be paid to the said Harshadbhai as and when the plots are sold by the developers i.e. the applicants.

4. It is the say of the complainant that the money given by the co-accused Harshadbhai was provided by the complainant. According to the complainant since the applicants did not transfer the agreement to sell in the name of the present complainant and did not return the earnest money to the co-accused, the FIR was filed.
5. *Prima facie* it appears to this Court that the dispute was between the complainant and co-accused Harshadbhai. The complainant did not have any privity of contract with the applicants. In any case, the entire dispute is a civil dispute between the parties.
6. Having regard to the same, issue Rule returnable on 18.7.2022. Learned APP would waive service of Rule on behalf of the respondent State. Interim relief in terms of Paragraph 13(C) qua the present applicants is granted. Direct service is permitted.

(NIKHIL S. KARIEL,J)

V.V.P. PODUVAL