

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 4605 of 2015**

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KUNJAL CHANDRAKANT MEHTA & 1....Applicant(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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Appearance:

MR JAL S UNWALA FOR MS TEJAL A VASHI, ADVOCATE for Applicant No. 1 - 2

MR LB DABHI, ADDL.PUBLIC PROSECUTOR for the Respondent(s) No. 1

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**CORAM: HONOURABLE SMT. JUSTICE ABHILASHA
KUMARI****Date : 06/08/2015****ORAL ORDER**

1. Heard Mr.Jal S. Unwala, learned advocate for Ms.Tejal A. Vashi, learned advocate for the petitioners.

2.1 It is submitted that petitioner No.1 resigned as Director of Rajlabdhi Infrastructure Private Limited ("the Company", for short) on 12.10.2011. It is submitted that accused No.3, Bhupendrabhai Patel, who is not a petitioner before the Court, took a loan of Rs.20 Crores and mortgaged the land and building constructed by the Company to the Corporation Bank. That after the resignation of petitioner No.1 as Director of the Company, petitioner No.1 borrowed an

amount of Rs.96,50,000/- from respondent No.2-Complainant, as a personal loan. According to the learned advocate for the petitioners, the post-dated cheques that were given as security were deposited in the Bank and came to be dishonoured. Proceedings under Section-138 of the Negotiable Instruments Act, 1881, were initiated by respondent No.2, wherein a tripartite settlement was arrived at. The said proceedings are still pending.

2.2 It is further submitted that a Settlement dated 22.12.2014 was executed between respondent No.2-Complainant, petitioner No.1 and accused No.3, wherein it has been stated that in lieu of the amount of Rs.96,50,000/-, to be paid by the petitioners to respondent No.2, another three flats, over and above the two flats booked by respondent No.2 in the building constructed by the Company, were to be given to respondent No.2. Over and above these five flats, the balance amount of Rs.25,00,000/- was to be given to him. A condition was attached that the allotment and possession of the flats were to be handed over to respondent No.2 on, or before, 31.03.2015.

2.3 It is submitted that the land and building of the Company, including the flats were mortgaged by accused No.3 on 28.12.2012, therefore, possession could not be handed over as there was a charge over the said flats though the allotment was made. It is submitted that the petitioners have not mortgaged the said flats and the payment for the flats has been made by petitioner No.1, which is clear from the five Sale Deeds that are placed on record. As per the Sale Deeds, this payment has been made to the Company.

2.4 It is next submitted that respondent No.2 first filed a complaint against the petitioners in the Navrangpura Police Station. While it was pending, he made an application to the Director General of Police and made a complaint at Adalaj Police Station. On coming to know about the said complaint, the petitioners sought anticipatory bail, which was granted on 24.06.2014. It is submitted that respondent No.2 approached the Court for cancellation of the bail, which application was rejected by the Sessions Court on 24.07.2014.

2.5 That the Adalaj Police Station then called

respondent No.2 for the recording of his statement. However, respondent No.2 did not want to pursue the matter at the Adalaj Police Station and did not go there to get his statement recorded. The complaint, therefore, was filed.

2.6 It is submitted that respondent No.2 then went to Kalol Police Station, after approaching the Deputy Superintendent of Police. The petitioners were called for the recording of their statements. The petitioners, once again, approached the Sessions Court, Gandhinagar, for grant of anticipatory bail. The said Court granted interim protection to the petitioners. However, respondent No.2 made an application for transfer of the case to another Court, which is pending before the learned Principal District Judge, Gandhinagar.

2.7 It is submitted that it is only thereafter, that the present FIR dated 27.07.2015 has been lodged on the basis of another complaint made by the petitioners before the Infocity Police Station.

2.8 In the above background, the learned advocate for the petitioners has submitted that the transactions

between the petitioners and respondent No.2 are purely civil in nature and no element of criminality is attached to them. The payment for the five flats allotted to respondent No.2 has been made by petitioner No.1, as is clear from the Sale Deeds which are on record at Annexure-K, collectively. It is submitted that after having got the allotment of the five flats, the consideration for which was paid by petitioner No.1, respondent No.2 has filed the present complaint against the petitioners. That the "No Objection Certificate" from the Bank was to be obtained by accused No.3 and not by the petitioners, therefore, the petitioners cannot be held responsible for that.

2.9 It is next submitted that petitioner No.2 is the father of petitioner No.1. He was neither a Director in the Company nor has anything to do with the sale transactions. His name is mentioned in the FIR, but no specific allegations are levelled against him.

3. Mr.L.B.Dabhi, learned Additional Public Prosecutor has pointed out to certain extracts of the FIR wherein it is stated that accused No.3 has

informed respondent No.2 that the money for the flats has not been given to him. Learned Additional Public Prosecutor has also drawn the attention of the Court to a statement in the FIR that petitioner No.1 signed on the Sale Deeds in spite of the fact that he ceased to be a Director on 12.10.2011, whereas the Sale Deeds were executed on 30.10.2014.

4. Having heard the learned counsel for the respective parties, the following order is passed :

Issue Notice returnable on 09.09.2015.

Mr.L.B.Dabhi, learned Additional Public Prosecutor waives service of notice for respondent No.1.

No coercive action be taken against the petitioners, till then, though the investigation may carry on.

In addition to the normal mode of service, Direct Service for respondent No.2, through the concerned Police Station, is also permitted.

(SMT. ABHILASHA KUMARI, J.)

Gaurav+