

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4754 OF 2021

1. Mr. Sandeep Dasgupta

Age:- 46 Years, Occ: Service,
R/at:- D-201, Plot :- 1,
Om Shiv Darshan CHS Ltd.,
Sector-15, CBD Belapur,
Navi Mumbai, 400 614.

2. Mr. Rakesh Sinha

Age:- 45 Years, Occ:- Service,
R/at:- D-202, Om Shiv Darshan
CHS Ltd., Plot-1, Sector-15,
CBD Belapur, Navi Mumbai,
400614.

... Petitioners

V/s.

1. State of Maharashtra.

At the instance of N.R.I.
Sagari Police Station, Navi Mumbai.

2. Mr. Vinay Sudarshan Gupta,

Age:- 60 Years, Occ:- Business,
R/at:- Room No. 703, Building No. 31,
NRI Complex, Sector-56,
Seawoods, Navi Mumbai.

**3. Senior Inspector of Police,
NRI Coastal Police Station,
Belapur, Navi Mumbai.**

**4. Deputy Commissioner of Police,
Zone 1, 1st floor, Plot No. 180,
Sector 19C, APMC Market,
Near YJ Petrol Pump,
Vashi, Navi Mumbai.**

**5. The Commissioner of Police
Opposite RBI, Sector 10,**

CBD Belapur, Navi Mumbai.

... Respondents

Mr. Kartik Garg a/w Mr. Aashka Shell for the Petitioners.

Ms. Megha Bajoria, APP for the Respondent-State.

Ms. Sonam Pandey a/w Ms. Shifa Ansari i/by Mr. Jay Daryani for the Respondent No. 2.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 7th AUGUST 2026.

PRONOUNCED ON : 12th OCTOBER 2026

JUDGMENT :-

1) By the present petition filed under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure (for short, “CrPC”), the Petitioners seek to quash and set aside FIR bearing C.R. No. 0172 of 2021 dated 24th July 2021 registered with the N.R.I. Sagari Police Station, Navi Mumbai under Section 379 and 34 of the Indian Penal Code (for short, “IPC”) and the resultant chargesheet bearing R.C.C. No. 65 of 2022 pending before the learned JMFC, Vashi, Navi Mumbai.

2) By an Order dated 28th July 2023, this Court issued Rule and stayed all further proceedings in the matter. During the pendency of the petition, the parties made attempts to settle the matter, which were not successful. The Petition was heard finally with the consent of the parties.

3) The case of Respondent No. 2 as alleged in the FIR is as under:-

3.1) Respondent No. 2, in the year 2007, purchased 17 shops and the

entire 'B' Wing of Om Shiv Darshan Society situated at Plot No. 1, Sector 15, Belapur Village, Navi Mumbai. Respondent No. 2 has alleged that, he also owns commercial parking on the first floor of the said society. One Mr. Munar Sariya Gautam has been hired by Respondent No. 2 to look after the said property. Some of the properties have been let out on leave and licence basis. Respondent No. 2 has an office in Shop Nos. 1 and 2, which he regularly visits. That, Respondent No. 2 is not a member of the society.

3.2) Respondent No. 2 had affixed planks/lamps with iron poles on the protection wall of the commercial parking area on the first floor, so that the board displaying the name of his shop would be visible at night.

3.3) On 12th July 2021, Mr. Munar Sariya Gautam informed Respondent No. 2 that, the said lamps and iron pipes had been stolen. It is alleged that, Respondent No. 2 could not find the said material at the place. On checking the CCTV footage installed in his parking, Respondent No. 2 noticed that, on 11th July 2021 at about 1.30 p.m., 2 to 3 unidentified persons were allegedly stealing and taking away the lamps and the iron pipes. As the Respondent No. 2 was busy with his work commitments, he could not visit the Police Station to lodge the complaint. However, on 24th July 2021, Respondent No. 2 lodged the FIR alleging that some unidentified persons had stolen 8 lamps along with iron pipes worth Rs. 16,000/-. Based on the aforesaid allegations, the present FIR came to be registered.

4) Mr. Kartik Garg, learned Advocate for the Petitioners submitted

that :-

4.1) The FIR as lodged by Respondent No. 2 is completely misplaced and untenable. The removal of the lamps and iron poles which were affixed upon the common parapet wall of the society were removed pursuant to the resolution dated 14th June 2021 passed by the General Body of the society, authorizing the removal of fixtures from the society's common property, areas and walls, including the parapet wall, for carrying out repairs.

4.2) The articles were neither dishonestly removed nor concealed nor appropriated by the Petitioners. The said articles remained within the society premises and, even before the registration of the FIR, Respondent No. 2 was interalia informed in writing and had complete knowledge that, the articles were lying in the society premises. Respondent No. 2 was in fact called upon to collect the same.

4.3) There are various issues and disputes pending between Respondent No. 2 and the society in respect of payment of maintenance, repairs and other charges. Respondent No. 2 has encroached upon the common driveways and first-floor common area, constructed a toilet within the 'B' Wing area and blocked the fire gate and fire exit.

4.4) The present proceedings like other criminal proceeding which are filed by the Respondent No. 2 or at his behest (FIR No. 67 of 2022 dated 7th March 2022 with the NRI Sagari Police Station) are all offshoot of the said disputes. A pure society dispute has been converted into criminal proceeding

so as to pressurize the Petitioners as managing committee members/members to give up their legitimate claims. The malafides are writ large on the face of the record itself.

4.5) The acts of the Petitioners are bonafide acts pursuant to the resolutions passed by the society and in any event for undertaking essential repairs, painting and installation of the fire-fighting system, etc. for and on behalf of the society. Due to the unauthorized installations and encroachments made by Respondent No. 2 upon the common areas and wall, the society had addressed various emails between June and November 2020, calling upon Respondent No. 2 to remove the unauthorized installations/restore the alterations.

4.6) Pursuant to the Emergency/Extraordinary General Body Meeting which was held on 14th June 2021, a resolution was passed authorizing the Managing Committee to interalia remove and seize unauthorized installations and fixtures made by members in the common society properties and walls. The said resolutions were circulated to members, including Respondent No. 2, and were also displayed on the society's notice board.

4.7) Written representations were made to the Commissioner of Police, Navi Mumbai and other authorities in respect of other encroachments, obstructions and interference by Respondent No. 2. Pursuant to the resolution dated 14th June 2021, the society's contractor had removed the lamps, poles and other fixtures which were installed on the common parapet wall. This was

done during the repair work undertaken by the society. The material was kept in the society premises.

4.8) On 16th July 2021, the society gave a detailed representation to the Commissioner of Police and Assistant Commissioner of Police complaining of the conduct of Respondent No. 2. This letter also address repeated attempts of intimidation by API Sameer Chaskar.

4.9) Between 16th July 2021 and 22nd July 2021, the society addressed emails to Respondent No. 2 calling upon him to remove the debris and articles, including the dismantled fixtures which were lying in the society's common area. No steps were taken by the Respondent No. 2.

4.10) On 24th July 2021, the society specifically informed Respondent No. 2 to remove the dismantled articles/ debris etc. on or before 31st July 2021. That, the spot panchnama prepared by the Police on 24th July 2021 shows the articles to have been recovered and seized from the society's premises itself. There are disputes in respect of recovery of maintenance from Respondent No. 2. The said issue is pending before the Deputy Registrar, Co-operative Societies. The present criminal prosecution is a counterblast action to the steps taken on behalf of the society.

4.11) Considering the facts of the present case, the offence of theft under Section 378 of the IPC cannot said to have been made out. The ingredient of dishonest intention or taking/ moving dishonestly is clearly absent. The articles were removed/dismantled pursuant to the General Body

resolution for carrying out repair works and retained within the society premises. Respondent No. 2 was made aware of and had knowledge of the same. The poles and lamps were affixed on the common parapet wall of the society and the same were causing hindrance to the repair work. Despite being informed, Respondent No. 2 was not taking any action. Therefore, with notice to Respondent No. 2, the said fixtures were removed to enable the society to carry out the repair work. The acts of the society were under a resolution and for the purpose of carrying on repairs. Therefore it can never be said that there was any dishonest intention to remove the property.

4.12) It is settled law that stilt and open parking spaces form part of the common areas and amenities of the building and are not separate independent premises which are capable of being sold or used for purpose other than sanctioned, and upon registration of the society, the building together with its common areas and amenities vest in the society. The Respondent No. 2 has misused the said parking areas and common areas.

5) Ms. Sonam Pandey, learned Advocate appearing for the Respondent No. 2 submitted that :-

5.1) Though, Respondent No. 2 owns commercial shops and the entire 'B' Wing, he is not a member of the said society. The same is evident from the copy of the letter dated 8th March 2018 issued by the Registrar, Co-operative Society.

5.2) The iron rods and lamp fixtures were his exclusive property and

the society had no right to remove the same without his permission. That, on the instructions of the Petitioners and the society members, the act of theft has been committed.

5.3) The chargesheet contains statements of witnesses, CCTV footage and other material to prove that the Petitioners are guilty of the offences punishable under Section 379 of the IPC.

5.4) After lodging the FIR, Police conducted an investigation and have already filed a chargesheet. A prima facie case is made out. From the perusal of the CCTV footage, it appears that, on the instructions and due permission of the Petitioner, unidentified persons entered the premises and committed the act of theft. The Petitioners have admitted that the iron pipes were removed from the walls. Whether the wall was the common society wall and whether the premises were owned by Respondent No. 2 are subject matter of the dispute. The lamps and poles were removed at the instruction of the Petitioner.

5.5) Respondent No. 2 has been harassed by the Petitioners and, between 2019-2022, Respondent No. 2 has filed various complaints against the Petitioners/society members.

6) Ms. Megha Bajoria, the learned APP appearing for the state supported the arguments advanced by the advocate appearing for the Respondent No. 2.

7) Mr. Garg, the learned Advocate appearing for the Petitioners in

rejoinder submitted that :-

7.1) The contention of Respondent No. 2 that, he is not a member of the society is contradicted by the society's records as well as the conduct of Respondent No. 2. The record prima facie indicates that, in the application for registration of society, Form-A, Respondent No. 2 is shown as a promoter member. The share certificate and share register maintained by the society identify Respondent No. 2 as its member.

7.2) Respondent No. 2 has participated in the proceedings before the Co-operative Court and asserted rights against the society.

8) During the arguments the learned Advocate for the Petitioners relied on the following Judgments:-

- i) *K.N. Mehra v. State of Rajasthan*, reported in (1957) 1 SCC 301.
- ii) *Chandi Kumar Das Karmakar v. Abanidhar Roy*, reported in 1963 SCC OnLine SC 143.
- iii) *Ramratan v. State of Bihar*, reported in 1964 SCC OnLine SC 132.
- iv) *Shriram v. Thakurdas*, reported in 1977 SCC OnLine Bom 173.
- v) *Nahalchand Laloochand (P) Ltd. v. Panchali Coop. Housing Society Ltd.*, reported in (2010) 9 SCC 536.
- vi) *Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.*, reported in (2019) 16 SCC 610.

9) Section 378 of the IPC defines the offence of Theft as follows :-

“378. Theft.—

Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent,

moves that property in order to such taking, is said to commit theft.

Explanation 1.— A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.— A moving effected by the same act which affects the severance may be a theft.

Explanation 3.— A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.— A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.— The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.”

- 10) It is also necessary to consider Sections 23 and 24 of the IPC which reads as under :-

“23. “Wrongful gain”.—

“Wrongful gain” is gain by unlawful means of property to which the person gaining is not legally entitled.

“Wrongful loss”.— “Wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, losing wrongfully.— A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.”

24. “Dishonestly”.—

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

11) To constitute an offence of theft it is necessary that (i) there is moving of a movable property of a person out of his possession without his consent, (ii) the moving should be for taking of the property with a dishonest intention. Therefore taking/moving with dishonest intention without the consent of the person are the essential ingredients to constitute an offence of theft. To have a dishonest intention is an essential ingredient. The term dishonestly is defined in Section 24 of the IPC to mean doing anything with the intention of causing wrongful gain to one person or wrongful loss to another is said to do that act dishonestly. Section 23 of IPC defines wrongful gain and wrongful loss. On reading of Sections 23 and 24 of IPC together, it is clear that the intention can be said to be dishonest, if in the act of taking the property it is the intention to cause wrongful gain by unlawful means which the person so taking is not entitled or causing loss by wrongful means of property to which the person so losing is legally entitled. It is therefore necessary that, the very taking/ moving out of property must be with a dishonest intention. This is in the essence the crux of the matter. It is therefore the intention of the taker which will decide whether the taking or moving of a thing is a theft.

12) Perused the entire record. The case of Respondent No. 2 is that, the board containing the name of Respondent No. 2, the iron rods and the lamps were removed by 2 to 3 unknown persons on the instructions of Petitioners. The Respondent No. 2 seeks to rely on the CCTV footage for the

same. The record indicates that, there are certain disputes and differences between Respondent No. 2 and the Petitioners. The said disputes pertain to certain encroachments, unauthorized alterations/construction undertaken by Respondent No. 2. It also appears that, there are certain disputes between Respondent No. 2 and the society in respect of society maintenance. It is the contention of the society that towards maintenance an amount of Rs. 34,16,323/- was due and payable as of 17th August 2021. The same is disputed by Respondent No. 2. The said issue is pending before the Registrar, Co-operative Societies. Prima facie, this appears to be the main dispute and bone of the contention between the parties.

13) Perusal of the Minutes of the Emergency/Extraordinary General Body Meeting dated 14th June 2021 would indicate that, the issues relating unauthorized construction/alteration pertain to encroachment of the common areas of the society, blockage of the fire-exit access in the 'A' Wing on the first-floor by Respondent No. 2 unauthorized installations or fixtures, it also appears that, there are certain issues/disputes in respect of repairs and maintenance of the 'B' Wing of the society. Pursuant to the said meeting, it was, inter alia, resolved by the society to take preventive steps against Respondent No. 2. The relevant portion of the resolution reads as under:

“12. The General Body considering the above and in apprehension of continuing passed the following over-arching resolutions towards proactive and nuisance and encroachment preventive steps by the Society's Managing Committee against Vinay Gupta with immediate effect:

a. IT IS HEREBY RESOLVED THAT the car parking spaces below A Wing on the first floor of the Society as allocated by the Society to the desirous 4 bonafide society members viz. Mr. Ashwani Anand (A-603), Ms. Pawan Sharma (A-702), Ms. Sharmishtha Datta (D-402) and Mr. Sohanlal Gundecha (D-203) be hereby regarded as disputed car parking spaces till the date of pronouncement of verdict by competent court (subject to appeals) based on adjudication of an Petition as may be filed by the Society against Mr. Vinay Gupta and the Builder M/s Mitul Enterprises including their representatives if any, upon receipt of complete set of documents about property ownership details of Mr. Vinay Gupta in the Society.

b. IT IS HEREBY FURTHER RESOLVED THAT considering no possession of any documents by the Society and it's Managing Committee till date about the complete ownership of property including car parking spaces allotted to Mr. Vinay Gupta by the Builder M/s Mitul Enterprises despite it's earlier requests to both the parties being the Builder and it's representatives and Mr. Vinay Gupta, the Society ought to allow the concerned residential members as named herein above to park their vehicles at their sole discretion and with an intent to prevent any illegal encroachments and allied activities by Mr. Vinay Gupta in the common areas of the Society in and around A and B Wings similar to what has been witnessed by the Society from 2010 till almost this date.

C. IT IS HEREBY FURTHER RESOLVED THAT the Managing Committee of the Society must not levy any car parking charges to any of the members parking their vehicles in the disputed car parking slots till further specific intimation by the Society through it's Managing Committee, subject to ratification by the General Body.

d. IT IS HEREBY FURTHER RESOLVED THAT the Managing Committee of the Society must adopt/initiate any of the steps/measures/actions as are essential to prevent unrest / violence repeatedly caused and attempted by or on behalf of Mr. Vinay Gupta whether by his representatives or any members of the Navi Mumbai Police intervening on civil jurisdiction of the society.

e. IT IS HEREBY FURTHER RESOLVED THAT the Managing Committee of the Society must immediately reissue an order/notice (further to the Society's notice to him dated 26th November 2019) calling for the complete details (evidenced by appropriate agreements, approvals orders etc.) of Mr. Vinay Gupta's property details including car parking allotments by the Society's Builder M/s Mitul Enterprises and it's representatives and

subject the details submitted for thorough legal investigation by the Society's lawyers with representation rights to Mr. Vinay Gupta and his lawyers.

f. IT IS HEREBY FURTHER RESOLVED THAT the Managing Committee of the Society must present the final investigation report for consideration of the General Body and allow the General Body to decide on appropriate legal recourse based on such final investigation report of it's lawyers.

g. IT IS HEREBY FURTHER RESOLVED THAT the Managing Committee of the Society must approach the senior most officials in CIDCO, NMMC and the Navi Mumbai Police to prevent the illegal and violent conduct of Mr. Vinay Gupta and lodge complaints with the Police should there be any criminal act committed by Mr. Vinay against any of the Society Members and Residents whether inside or outside the Society premises.

h. IT IS HEREBY FURTHER RESOLVED THAT the Managing Committee of the Society must forewarn and adopt any measures as it deems appropriate to remove and seize with or without notice any unauthorized installations or fixtures within the common property or areas or walls of Society by or on behalf of any member including Mr. Vinay Gupta and any tenants within the Society. The seized articles if any after due notice at the discretion of the Managing Committee shall be disposed off by the Society as it deems appropriate.

i. IT IS HEREBY FURTHER RESOLVED THAT the Managing Committee of the Society must direct Mr. Vinay Gupta to forthwith remove all debris or wastes or any articles dumped by him to cause intentional public nuisance and health hazards to the Society Members and residents including children in any open and exposed area of the Society and levy the reimbursement charge on him against the actual cost of debris and articles removal by the Society on his behalf towards safe and clean living.

J. IT IS HEREBY FURTHER RESOLVED THAT the Managing Committee of the Society is hereby empowered to call for General Body meetings in quick successions if deemed appropriate by them in this regard besides preparing, motivating and nurturing other willing, capable and interested members to take up roles of future Managing Committee Members as soon as the new election procedures are announced by relevant Ministry.”

14) The society by its letter dated 21st June 2021, addressed the Commissioner of Police, Navi Mumbai, complained about some

misrepresentation and actions of Respondent No. 2 i.e. dropping garbage in the society and misbehaving with certain lady members, provoking violence inside the premises of the society. I have also noted, the contents of the society's, email addressed to Respondent No. 2 as early as 16th July 2021, requesting Respondent No. 2 to remove debris accumulated by him which were causing nuisance to the members of the society. In the said email, the society had also complained of certain acts of attempting to construct barricades on the driveways around 'A' Wing and 'B' Wing and other instances. Respondent No. 2 was called upon to remove all debris and garbage which was heaped intentionally under the 'B' Wing property on the first floor as well as strewn under the instructions of Respondent No. 2 at the 'A' Wing first floor and the common areas/driveways of the society. Respondent No. 2 was requested to remove belongings such as wooden structures, articles and glass sheets which were causing threat to the normal livelihood in the adjoining area of the 'B' Wing. By the said email dated 16th July 2021, the Respondent No. 2 was requested to remove the article, debris etc. before 5.00. PM on 23rd July 2021.

15) On 16th July 2021, the society had also made a detailed representation to the Commissioner of Police, Navi Mumbai, in respect of the encroachment, illegal constructions, etc and also complained about the repeated acts of intimidation by API Sameer Chaskar.

16) The Society by email dated 24th July 2021, addressed to

Respondent No. 2, informed Respondent No. 2 that they had cleared truckloads of debris heaped up by him pursuant to the society notice dated 16th July 2021. Perusal of the email would prima facie indicate that, Respondent No. 2 was specifically informed of the articles (as identified by Mr. Munnar the representative of Respondent No. 2) which were kept in the society, i.e. 9 sliding frames with glasses, 2 sliding frames, 5 wooden gates with rusted irons, and 8 rusted iron poles. Respondent No. 2 was requested to remove the said articles from the society by collecting them after giving a written application-cum-undertaking that he shall not install/affix any of these on the society wall without prior written approval of the Managing Committee. Respondent No. 2 was informed that, if the required action was not taken by 5 p.m. on 31st July 2021, the society shall proceed to dispose of these items forthwith.

17) Most pertinent to note that, perusal of the spot panchanama dated 27th September 2021 indicates that, the said material of which theft is alleged to have been committed was all lying in the society premises itself. Pertinent to note that, the society by its email dated 16th July 2021 had requested Respondent No. 2 to remove all debris, garbage heaped and articles belonging on or before 23rd July 2021. On 24th July 2021, the society after notice removed the same. The incident as alleged is of 11th July 2021 and the FIR was filed only on 24th July 2021. The explanation given by Respondent No. 2 is that, due to his work commitments, he could not file the complaint.

18) In the intervening period, i.e between 11th July 2021 and 24th July 2021 there are on record various communications between the society and Respondent No. 2 which would prima facie indicate that, there are certain disputes among the parties inter alia in respect of payment of maintenance, membership of the society and certain other acts of encroachment and illegal construction alleged by the Petitioners against Respondent No. 2. From the record and based on the arguments advanced, it prima facie appears that the lamps, poles and name board were removed under the instructions of the society/Petitioners for the purpose of carrying out repair work of the society premises itself and they were kept behind the society office in the society.

19) Perusal of the record would prima facie indicate that, there is no material which would indicate that, the lamps and iron poles were dishonestly moved, taken or removed. What Respondent No. 2 has alleged is an offence of theft under Section 378 of the IPC. Perusal of Section 378 of the IPC would indicate that the essential requirements for attracting the provisions of Section 378 are (i) that the moving/taking of the movable property, (ii) must be with dishonest intention and (iii) the said property should be taken out of the possession of any person without such person's consent. In the facts of the present matter, the offence under Section 378 of the IPC is not attracted. Perusal of the FIR and the chargesheet does not indicate any dishonest intention or unlawful act which would amount to theft, as the acts of the Petitioners are not accompanied by or done with any dishonest intention. The

Petitioner, as a member of the Managing Committee of the society, acted pursuant to the resolution passed under the General Body Meeting of the society.

20) Pursuant to the resolution passed at the Emergency/Extraordinary General Body Meeting on 14th June 2021, the Managing Committee was authorized to adopt measures to remove and seize, with or without notice, any unauthorized installation of fixtures within the common property, areas or walls of the society, erected by or on behalf of any member, including Respondent No. 2, or any tenants within the society. The seized articles, after due notice, at the discretion of the Managing Committee, would be disposed of by the society as it deemed fit. The Managing Committee also informed Respondent No. 2 to remove all debris, waste or any articles dumped by him which caused intentional public nuisance and health hazards to the society members and residents, including children, in any open and exposed area of the society and levy the reimbursement charge on an actual basis upon Respondent No. 2. Prima facie, it appears that the actions of the Petitioners were pursuant to the resolution.

21) Pursuant to the resolution of 14th June 2021, the Petitioner, by email dated 16th July 2021, informed Respondent No. 2 to take immediate corrective steps. Considering this fact, even if it is assumed that the seizure of the property was improper for any reason, the same still cannot amount to the offence of theft. Prima facie, it appears that there was no dishonest intention

on the part of the Petitioners.

22) Considering the facts of the present case, I prima facie find that the acts of the Petitioners are neither dishonest nor have they caused any wrongful gain to themselves or wrongful loss to Respondent No. 2. The actions of the Petitioners are as a members of the Managing Committee of a Co-operative Housing Society and pursuant to the resolution passed at the Emergency/Extraordinary General Body meeting of the society.

23) Perusal of the FIR does not attribute any dishonest act to the Petitioners. There is no allegation or material to show that, either of the Petitioners intended to derive any wrongful gain or any personal or pecuniary benefit from the lamp poles or the iron rods. It is admitted position that the said material was found in the society premises. Prima facie, the material collected in the chargesheet would also indicate that the said material was removed at the instructions of the Petitioners, who were acting pursuant to the resolution of the society. Perusal of the FIR and the allegations made therein, prima facie, do not indicate any such dishonest intention, wrongful loss or wrongful gain. There are pending disputes between the housing society and Respondent No. 2. Considering the peculiar facts of the case it appears that the FIR is a counterblast to the actions initiated by the society. The present FIR and consequent criminal proceedings, prima facie appear to be a offshoot of the disputes and issue between the society and Respondent No. 2. Be that as it may, the FIR and the material on record does not make out any

offences as alleged in the FIR.

24) In the aforesaid facts and circumstances, I am of the prima facie opinion that, no prima facie case is made out under Section 379 of the IPC. The allegations in the FIR prima facie do not constitute the offence of theft. Considering the factual background and the chequered history of disputes between Respondent No. 2 and the Petitioners, I am of the opinion that an otherwise civil dispute emanating from questions of membership of the society, payment of maintenance charges and other incidental member society dispute has been exaggerated and an attempt has been made to initiate criminal action against the society members. There are also charges and disputes regarding improper or illegal use of the premises and certain encroachments or illegal construction alteration made by the Respondent No. 2 to the premises complaints in respect of which have been made. The allegations are also required to be seen in this background of the matter. Even otherwise, even on a bare perusal of the allegations in the FIR and the material in the chargesheet, even if accepted in their entirety, in my view, do not disclose any offence under Section 379 of the IPC nor any dishonest intention, as is essentially required.

25) Considering the aforementioned facts, submissions and the law as laid down by the Hon'ble Supreme Court, I am inclined to quash the present proceedings. This would be a fit case to invoke the inherent powers of this Court under the provisions of Section 482 of the Code of Criminal Procedure

to quash and set aside the criminal proceedings in the interest of justice and to prevent the abuse of the process of law.

26) A useful reference can be made to the Judgment of the Hon'ble Supreme Court in the case of *State of Haryana V. Bhajan lal* reported in 1992 *Suppl (1) SCC 335*, wherein the Hon'ble Supreme Court has observed as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under

Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

27) Considering the facts of the present case, I am of the view that category 1,5 and 7 of the case of *State of Haryana V. Bhajan lal (Supra)* squarely applies to the facts of the present case. I am of the view that, it would neither be just or in the interest of justice to permit the present prosecution in respect thereof to continue.

28) In view of the above, the Petition is allowed in terms of prayer clauses (a) and (aa). Rule is made absolute.

(RANJITSINHA RAJA BHONSALE, J.)

SAGAR
SANTOSH
MAGAR

Digitally signed by
SAGAR SANTOSH
MAGAR
Date: 2026.10.14
21:23:18 +0530