

*Shubhada S Kadam*

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 470 OF 2026

Nish Developers Pvt Ltd Through Its Directors  
Mr Jayprakash Khemka

...Applicant/s

**Versus**

1. The State of Maharashtra
2. The Sr.Inspector of Police, Economic  
Offences Wing, Crime Branch, Mumbai.
3. Vinod Mohanlal Jain

...Respondent/s

---

Mr. Madhur Surana along with Mr. Sandeep Singh, Advocate for Applicant.

Mr. M. G. Patil, APP for Respondent-State.

Mr. Ashok M. Saraogi along with Mr. Abdullah M. Shaikh, Advocate for Respondent No.3.

PI-Mr. Vijendra Dhurat along with PI-Devidas Sangale, EOW, Unit-04, Mumbai.

---

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th OCTOBER, 2026.

**P.C. :**

1. The challenge in this revision application is to the impugned order passed by the learned Additional Chief Judicial Magistrate, 47th Court, Esplanade, Mumbai, whereby the learned Magistrate has accepted the protest petition filed by respondent No.3 and directed that the B-summary report be returned to Economic Offences Wing (EOW) for further investigation.

Digitally  
signed by  
SHUBHADA  
SHANKAR  
KADAM  
Date:  
2026.10.10  
13:43:13  
+0530

*Shubhada S Kadam*

2. It is prosecution's case that the applicant-company developed the land property known as Kasam Chawl and Islam Mill Compound (for short "the suit property"). It is alleged that no structures were available on the suit property prior to the year 1969, but the applicant, with the help of various authorities manipulated and created forged and fabricated record and showed structures were existing on the suit property prior to the year 1969, availed FSI of 4, and cheated the government for thousands of crores. The offence was registered against applicant and others on private complaint filed by respondent No.3.

3. It is contention of learned counsel for the applicant that there were 642 cess and 52 non-cess structures i.e. total 694 structures existed on suit property and more than 95 % occupants of the suit property gave their written consent in favour of the applicant for redevelopment. Accordingly, the applicant submitted a proposal to various authorities for cluster development of the suit property. The High Power Committee (for short "HPC") constituted by Government after considering applicant's proposal granted approval under Regulation 33(9) of the Development Control and Promotion Regulations (DCPR). Learned counsel further submitted that respondent No. 3 is neither an occupant, tenant, nor member of the suit property and he is a stranger to the redevelopment. He, with the sole intent to blackmail and extort money from the applicant, began instigating certain occupants of the suit property to challenge the cluster redevelopment activities taken up by the applicant. Accordingly, the occupants of the suit property preferred an appeal before the HPC, challenging the redevelopment carried out by the applicant. The HPC, after hearing both sides, dismissed the appeal. The said order was challenged

*Shubhada S Kadam*

before this Court by way of a writ petition and this Court dismissed the said writ petition.

3.1. Learned counsel further submitted that respondent No. 3, along with his accomplice Mr. Santosh Pandey, filed an application before the National Green Tribunal (for short “NGT”), Pune, challenging the environment clearance granted by the Environment Department to the applicant. The applicant challenged the locus standi of respondent No. 3 and the issue of limitation before the NGT, but the said application was rejected. Hence, the applicant challenged the said order by filing a writ petition before this Court. The said matter went up to Supreme Court. It is submitted that though the applicant had obtained environment clearance in the year 2008, respondent No. 3 made false allegations that the applicant had not obtained environment clearance and said matter was dragged till Supreme Court.

3.2. Learned counsel further submitted that Respondent No. 3 and his accomplice Santosh Pandey threatened the directors of the applicant company, and therefore, a complaint was filed against them at Worli Police Station. It is submitted that respondent No. 3, along with another person, filed LC Suit No. 2783 of 2016 in the City Civil Court, Mumbai, praying for directions for appointment of a Court Commissioner to investigate the redevelopment project carried out by the applicant and to initiate criminal proceedings against the applicant and others in connection with FSI norms and policies, and for several other reliefs. In the said suit, a notice of motion was taken out seeking directions to MCGM and the Government of Maharashtra to issue a stop work notice and for injunction

*Shubhada S Kadam*

restraining the applicant from carrying out redevelopment. Thereafter, respondent No. 3 and others withdrew the said suit and notice of motion.

3.3. Learned counsel further submitted that during the pendency of the said suit, respondent No. 3 preferred a criminal complaint before the learned Metropolitan Magistrate, Bandra, against the applicant and Officers of Municipal Corporation of Greater Mumbai (for short “MCGM”) for offences punishable under Sections 420, 465, 466, and 467 read with Section 120-B of the IPC. In paragraph 17 of the said complaint, respondent No. 3 stated on oath that he had not filed any other complaint in any other Court against the accused. In spite of filing the said criminal complaint, respondent No. 3 filed Criminal Writ Petition No. 1487 of 2016 before this Court against the applicant and others, inter alia praying for directions to constitute a Special Investigation Team (SIT) to investigate the matter, and making allegations that the applicant had played fraud in obtaining permissions and sanctions for the redevelopment. In paragraph 26 of the said writ petition, it was stated on oath that no such other petition was either filed or pending either in this Court or in any other Court in India.

3.4. Learned counsel further submitted that the applicant filed an affidavit-in-reply in the said writ petition, pointing out that respondent No. 3 and his accomplices are blackmailers and extortionists and the said writ petition was filed only with a view to extort money. Learned counsel further submitted that respondent No. 3 suppressed the fact of filing Criminal Writ Petition No. 1487 of 2016 from the learned Metropolitan Magistrate, Bandra, and in the said criminal complaint obtained an order of issue process on 20th August 2016 under Section 156(3) of the Cr.PC.

*Shubhada S Kadam*

Respondent No. 3 also suppressed the fact of filing of the said criminal complaint and the order passed under Section 156(3) of the Cr.PC. from this Court and thereafter sought withdrawal of Criminal Writ Petition No. 1487 of 2016, which was permitted to be withdrawn on 22nd August 2016. Learned counsel further submitted that on the basis of the order under Section 156(3) of the Cr.PC., offence was registered against the applicant and others at Kherwadi Police Station.

3.5. Learned counsel further submitted that the Senior Inspector of Police, Kherwadi, investigated the matter and found that the complaint filed by respondent No. 3 was false and baseless, and accordingly submitted a B-summary report before the learned Magistrate, and also prayed that action be taken against respondent No. 3 for filing a false complaint. Learned counsel further submitted that respondent No. 3 preferred a criminal application before the learned Magistrate seeking transfer of Complaint No. 38/SW/2016 from Kherwadi Police Station to EOW. After hearing the parties, the learned Magistrate, rejected respondent No. 3's application, observing that since the investigation was completed and the B-summary report was submitted, there was no question of transferring the investigation from Kherwadi Police Station to EOW.

3.6. Learned counsel further submitted that when respondent No. 3 came to know about the said B-summary report, he filed Criminal Writ Petition No. 767 of 2017 before this Court praying that the investigation of the present case be transferred from Kherwadi Police Station to EOW, Mumbai or any other independent agency. In the said writ petition, respondent No. 3 did not join the applicant as party respondents. The

*Shubhada S Kadam*

applicant filed a criminal application praying to be joined as intervenors. Though the said petition was pending before this Court respondent No. 3, on 2nd March 2017, filed a transfer application before the learned Chief Metropolitan Magistrate (for short "CMM"), inter alia seeking transfer of CC No. B-SUM/16 from the Metropolitan Magistrate, 32nd Court Bandra, to another Metropolitan Magistrate. It is submitted that respondent No.3 suppressed the fact of filing of the criminal writ petition before this Court seeking transfer of investigation from Kherwadi Police Station to EOW. Criminal Writ Petition No. 767 of 2017 was placed for admission before Division Bench of this Court on 21st March 2017, and respondent No. 3 suppressed the fact of filing the transfer application before the learned CMM from this Court. It is submitted that the Division Bench of this Court after hearing both parties, permitted respondent No. 3 to withdraw the said criminal writ petition. The transfer application of respondent No. 3 was also rejected by the learned CMM. Learned counsel further submitted that respondent No. 3 thereafter filed a protest petition before the learned Magistrate's Court in respect of the B-summary report. After hearing both parties, the learned Magistrate, without calling the investigating officer and the Assistant Public Prosecutor, accepted respondent No. 3's protest petition and directed Kherwadi Police Station to hand over the entire case papers to EOW, Mumbai, to investigate the matter as per the complaint and protest petition and submit report. It is submitted that against the said order, the applicant filed criminal writ petition before this Court, thereafter, the applicant withdrew the said writ petition.

3.7. Learned counsel further submitted that as per the order of the learned Magistrate, EOW conducted a further and in-depth investigation, in the course of which it obtained and verified the records of MCGM

*Shubhada S Kadam*

including assessment records and rent receipts, the records of the City Survey, the records of MHADA, and recorded the statements of the concerned officials, and again found that no offence was made out and submitted its B-summary report before the learned Magistrate. It is submitted that respondent No. 3 filed a protest petition requesting rejection of the B-summary report and seeking further investigation. It is submitted that respondent No. 3 had made serious and wholly unsubstantiated allegations of fraud involving an amount of more than ₹2,000/- crores, which is baseless. The EOW filed a reply to the protest petition and pointed out several grounds why the protest petition deserved to be rejected and the B-summary report deserved to be accepted.

3.8. Learned counsel further submitted that after hearing the parties, the learned Magistrate accepted the protest petition of respondent No. 3 and returned the B-summary report to EOW for further investigation, directing EOW to investigate the matter in terms of the protest petition and submit a report. It is submitted that the learned Magistrate, in the impugned order, nowhere recorded that the material on record discloses the commission of any cognizable offence, nowhere identified the offences alleged to be disclosed, did not take cognizance, and did not deal with the reasoning of the investigating officer on any single item. Instead, the learned Magistrate framed a series of questions and remitted them at large to the investigating agency, including for examination by unspecified independent technical or financial experts. Learned counsel further submitted that the order passed by the learned Magistrate is erroneous and without any cogent reason, and requested to allow the application.

*Shubhada S Kadam*

4. It is contention of learned counsel for respondent No. 3 that the applicant and the concerned authorities manipulated the records and created forged and fabricated documents to show that structures were available on the suit property prior to the year 1969, by virtue of which FSI of 4 was availed and benefits of more than ₹2,000/- crores were generated by the applicant. It is submitted that respondent No. 3 obtained necessary information in respect of the suit property under the RTI Act, which shows that no structures were situated on the suit property, hence, there was no occasion for any department to sanction FSI of 4. Learned counsel further submitted that Index-II/Annexure-II of M.B.R.R. Board shows heavy industries on the property, with measurement of galas unusually given in square meters. All these galas belong to one party or its sister concerns, and therefore, in law, they are required to be treated as a single gala for calculation of FSI. Applicant is running as many as 17 sham companies, whose directors are members of one family, their close relatives or employees, and these companies were created only to show structures owned by different entities. This issue was raised by one of the occupants before High Power Committee.

4.1. Learned counsel further submitted that applicant relied upon a letter of B.M.C. dated 10th January, 2008 bearing No. FS/11-A-OD/BF permitting removal of loft/mezzanine floor, however, the outward register for 10 days before and after the said date shows that no such letter was issued. Subsequently, an entry was manipulated in the register to show the letter as of the year 2007. Information obtained under RTI Act shows that letter No. FS/32917/BF dated 18th February, 2008 was issued to a Rationing Office and not to applicant. It is further submitted that letter of MHADA dated 3rd November, 2016 shows that applicant took benefit of

*Shubhada S Kadam*

structures which never existed prior to year 1969. Applicant also took benefit of mezzanine floors, although for considering the same their existence was required to be proved prior to 1995. Electricity meter details obtained under RTI show that only 8 structures existed on the suit property prior to year 1969, which demonstrates the forgery and fraud committed by applicant.

4.2. Learned counsel further submitted that when respondent no.3 started pursuing the matter, he was physically attacked by persons hired by applicant, for which FIR was registered at Kherwadi Police Station. In order to silence him, a false FIR for extortion was registered against him at Worli Police Station, which on investigation was found to be false. Another FIR was registered against him in Bihar at the behest of directors of applicant, which came to be closed. It is submitted that all this shows that applicant attempted to harass respondent no.3 to force him not to take any action. Learned counsel further submitted that on the complaint of respondent no.3, learned Magistrate directed Kherwadi Police Station to investigate the matter, and accordingly FIR came to be registered. However, police were not interested in carrying out investigation, and at the instance of applicant and possibly due to interference of politicians close to directors of applicant, B-Summary report came to be filed. The protest petition of respondent no.3 was allowed and investigation was transferred to EOW. The EOW recorded the detailed statement of respondent no.3 but did not produce it before any Court, and again filed B-Summary report. The protest petition of respondent no.3 was allowed by the impugned order.

4.3. Learned counsel further submitted that the issue involved in

*Shubhada S Kadam*

present matter is not ownership of the suit property but occupancy and eligibility to get FSI. Applicant claims that there were 342 cess and 52 non-cess structures and 95% occupants gave written consent, however, since no structures existed prior to year 1969, the question of any such consent does not arise. It is further submitted that the NOCs and permissions relied upon by applicant have been obtained by playing fraud and/or in collusion with officers of the concerned departments. These include permissions of Ministry of Environment, Maharashtra Pollution Control Board, Chief Fire Officer, High Rise Committee, Airport Authority and High Power Committee, approval of building plans, commencement certificate by B.M.C. and part occupation certificate. Grant of occupation certificate makes no difference for considering a criminal case, as there are instances where such permissions were cancelled and buildings were demolished.

4.4. Learned counsel further submitted that though applicant contends that respondent no.3 is neither occupant nor tenant and has no right, title or interest in the property, criminal law can be set in motion by any person who is conversant with the facts of the case, and therefore the contention regarding locus is false. It is further submitted that the orders passed by HPC, this Court, NGT and Hon'ble Apex Court relied upon by applicant have nothing to do with the subject matter of the present proceedings, as the issue of fraud was never before any Court, and such orders have been invited in collusion through applicant's own persons, including Mr.Santosh Pandey, on whose proceedings applicant relies, who is employed with applicant as a liaisoning officer, and respondent no.3 has nothing to do with him. It is further submitted that limitation is not applicable to criminal proceedings. The allegation that respondent no.3 is a

*Shubhada S Kadam*

blackmailer and extortionist is false, as the extortion allegation was investigated by Worli Police Station and found to be false. It is submitted that the Long Cause Suit filed by respondent no.3 before City Civil Court is withdrawn, it is a matter of record.

4.5. Learned counsel further submitted that the learned Magistrate has rightly observed that there was no expert opinion in respect of the maps and no statement of witnesses regarding the maps, which needs to be investigated. Learned counsel further submitted that records of MHADA were different, the records of BMC were different, the records of the Electricity Company were also different. Learned counsel further submitted that all the structures shown by MHADA belonged to companies which are sister concerns of each other with the same directors. Learned counsel further submitted that continuous offence was being committed by way of merging dry balconies into the flats and utilizing the entire premises. Learned Magistrate has passed a well-reasoned order and no interference is required in it and requested to reject the application. He relied on following judgments:

1. *Manohar Lal versus Vinesh Anand and ors. (2001) 5 SCC 407;*
2. *Sheonandan Paswan versus State of Bihar and ors. (1987) 1 SCC 288;*
3. *Subramanian Swamy versus Manmohan Singh and anr. (2012) 3 SCC 64;*
4. *A. R. Antulay versus Ramdas Srinivas Nayak and anr. (1984) 2 SCC 500;*

5. It is contention of learned APP that investigation is done by two independent agencies, but nothing is found as alleged by respondent No.3. The order passed by learned Magistrate is erroneous.

*Shubhada S Kadam*

6. I have heard all learned counsel, perused the impugned order and documents produced on record.

7. While passing the impugned order, learned Magistrate has observed that the basic allegations raised by respondent No.3 are not merely against the existence of official permissions. The allegation is that such permissions and benefits were obtained on the basis of incorrect or manipulated documents and by showing structures which, according to the informant, did not exist on the relevant cut-off date. Therefore, the investigating authority was required to examine the correctness of the basic facts and documents on the basis of which the permissions and benefits were obtained.

8. Learned Magistrate further observed that the aspect of FSI requires independent verification and cannot be concluded merely on the basis that the original city survey record was genuine. Learned Magistrate further observed that investigation was required to examine the material placed before the various authorities while obtaining approval of the redevelopment of the suit property. Learned Magistrate further observed that the material placed in the protest petition discloses specific documentary discrepancies which had not been satisfactorily reconciled in the B-summary report.

9. After going through the record, it appears that learned Magistrate has passed the impugned order on the basis of conjectures and surmises, holding that further investigation is required in view of the protest petition, without any cogent reasoning. It appears from record that while passing order, the learned Magistrate has not gone through the record properly. The learned Magistrate failed to consider that the

*Shubhada S Kadam*

applicant's redevelopment scheme was challenged before the HPC constituted by the State of Maharashtra and thereafter, before this Court by filing writ petition, wherein the HPC as well as this court upheld the validity of the redevelopment scheme approved by the HPC. Hence, the illegality or validity of such a redevelopment scheme cannot be questioned. It appears from the record that, on the basis of the permissions granted by the HPC, sanctions were granted by the State Government, MHADA, and the Municipal Corporation, and the Municipal Corporation has issued occupation certificates for the constructed buildings on the redeveloped property.

10. Learned Magistrate has held that further investigation is necessary in view of protest petition. It appears from the record that earlier, Kherwadi Police Station filed a B-summary report in the present case, and thereafter, on the protest petition of respondent No. 3, the matter was transferred for investigation to EOW. The EOW conducted an in-depth investigation and again filed a B-summary report. Learned Magistrate, in paragraph 7 of the impugned order, observed that "the earlier Court had directed an in-depth investigation into such aspects". Respondent No.2-EOW had complied with that direction. However, Learned Magistrate did not record what remained to be investigated that was not already covered by the EOW investigation. A successive direction for further investigation has been made without any reason. It appears that learned Magistrate also failed to consider that criminal Writ Petition was filed by respondent No. 3 before this Court seeking similar and identical reliefs, which were mentioned in the private complaint filed before the learned Magistrate, and the said criminal writ petition was withdrawn by respondent No. 3. Learned Magistrate also did not consider Long Cause

*Shubhada S Kadam*

Suit No. 2783 of 2016 was filed by respondent No. 3 to investigate redevelopment given to the applicants, which was also withdrawn by respondent No. 3.

11. It appears from the record that respondent No. 3 has suppressed the fact of filing criminal complaints from Courts. Firstly, the allegations made by respondent No. 3 in the private complaint were investigated by Kherwadi Police Station, and thereafter on the protest petition filed by respondent No. 3, the matter was further investigated by EOW. Two independent investigating agencies have investigated the matter. They have recorded the statement of respondent No. 3, collected the documents provided by him, and accordingly investigated the allegations, recorded the statements of the concerned witnesses, formulated questions, and sought explanations from the concerned authorities and filed B-summary reports. This shows that the investigating officers conducted a detailed investigation as per the allegations of respondent No.3. Despite this, respondent No.3 filed a protest petition seeking further investigation. This shows that respondent No.3 is taking undue advantage of the rights guaranteed under the Constitution of India, wasting the time of the court, and compelling the police machinery to waste time in investigating baseless allegations. This shows substance in the allegation of the applicant that respondent No. 3 is a blackmailer and extortionist.

12. It is contention of learned counsel for respondent No. 3 that he is a whistle-blower. However, the record counters this claim. A genuine whistle-blower would not conceal the filing of complaints on the same grounds in different Courts and would not present incorrect facts on oath

*Shubhada S Kadam*

before the Courts. Such conduct reflects poorly on the integrity of respondent No. 3 and indicates that his intentions were not clean.

13. B-summary report is filed by the investigating officer when he/she concludes that there is no credible evidence or *prima facie* case against the accused, or when the complaint is determined to be maliciously false, frivolous, or unfounded. When a B-summary report is filed, learned Magistrate is expected to review it properly. In the present case, it appears that learned Magistrate has not reviewed the B-summary report properly and has passed the impugned order without application of mind and has been swayed by the allegations made in the protest petition, without considering the fact that the allegations challenging the validity of the redevelopment project have been rejected by this Court. I have gone through case-laws cited by learned counsel for respondent No.3. The facts of present case and cited case-laws are different, hence, not applicable.

14. In view of the above-mentioned reasons, I pass following order:

**ORDER**

- a) The revision application is allowed.
- b) The impugned order dated 28<sup>th</sup> August, 2026 passed by learned Additional Chief Judicial Magistrate, 47th Court, Esplanade, Mumbai, below Exhibit-1 in C.C.No.4702388/MISC/2019, is quashed and set aside.
- c) B Summary report is accordingly accepted.

(SHIVKUMAR DIGE, J.)