

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
REVISION APPLICATION NO.308 OF 2014

M/s. Ganesh Associates & Others Applicants
Vs.
The State of Maharashtra & Anr. Respondents

Mr. S.R. Nargolkar i/b Ms Meenakshi Sakhare for the
Applicants.
Ms S.V. Gajare, APP, for the Respondent-State.
Mr. V.S. Shelar for Respondent No.2.

CORAM: A.V. NIRGUDE, J.

DATED: NOVEMBER 18, 2015

P.C:

1. The applicant No.1 is a partnership firm and applicant Nos.2 to 4 are its partners. They are made accused in Regular Criminal Case No.607 of 2011, which is pending before the learned Judicial Magistrate, First Class, Pune. Offences under Sections 409 and 420 r/w Section 34 of the IPC are alleged against the applicants.

2. The parties initially entered into an agreement in the year 2000 whereby the applicants agreed to develop respondent No.2's property in Pune and in lieu thereof they agreed to

provide certain number of flats, shops, etc., to respondent No.2. Despite construction of the building, the flats and shops were not given to the complainant. Because of this, the parties again entered into a new contract in 2004. This time, again some promises were made to the respondent/complainant. In 2007 a building was constructed but again the flats and shops were not given. Because of this, the parties entered into a third agreement in 2009. This time, again the applicants agreed to provide one flat and one shop along with certain monetary compensation to the respondent/complainant. Despite all these developments, the complainant filed a civil suit in 2010 alleging that there was breach of contract and the flats and shops, agreed to be given to him, were not given, etc.. The applicants raised a specific defence that in the light of the facts of the case, the earlier two contracts stood terminated when the last contract was entered into. There is also such an endorsement on each of the contracts. The applicants admitted their liability to provide one flat and one shop and certain compensatory amount. The Court decreed the suit only to the extent of the terms of the last contract. The Court held that the earlier contracts stood terminated. Despite all this, during the pendency of the suit, the respondent/complainant filed the complaint. The learned Magistrate rightly held that no offence is made out in the complaint and therefore no process could be issued. As against this order, the complainant went in revision before the learned Sessions Judge and it was allowed. As against this, the present

revision is filed.

3. On a perusal of the complaint, I am of the view that no offence is made out in the complaint and therefore the revision should succeed. The revision is allowed. The order of the learned Sessions Judge, dated 3-9-2013, is set aside and that of the learned Magistrate dated 3-10-2011 is revived. All subsequent orders passed by the learned Magistrate are set aside, The revision accordingly stands disposed of.

(A.V. NIRGUDE, J.)