

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

CRIMINAL WRIT PETITION NO. 144 OF 2014

E.P. Rajgopalan & Ors. ... Petitioners

V/s.

Ramesh T. Shetty & Anr. ... Respondents

Mr. Ajay S. Patil a/w. Mr. Amol P. Mhatre for the Petitioners.
Mr. Rohan Hindurao Barge for Respondent No.1.
Mr. Deepak Thakare, A.P.P. for the State.

CORAM : A. V. NIRGUDE, J.

DATE : 5th DECEMBER, 2015.

P.C. :

1. The petitioners are accused in complaint No.26597 of 2013 filed by the respondent No.1 in the Court of Judicial Magistrate, First Class, Vashi, District Thane. They sought quashing of the complaint. The facts leading to this Petition are as under :-

2. The petitioners and respondent No.1 are residents of C.B.D. Belapur. They had acquired flats in various buildings. Residents of these flats have formed an Association under the

provisions of Maharashtra Apartment Ownership Act. The name of the Association is 'C6 type apartments Owners Association'. It was registered under the provisions of the Maharashtra Apartment Ownership Act. The respondents are some of the residents of building No.16. They formed a separate Association and started dealing with the affairs of their building. In the process, some flats of the building No.16 were transferred to third party. For facilitating said transfers, the transferers produced no objection letters and no dues certificates purportedly issued by the Association. When such documents were noticed by office bearers of the Association, they made complaint about it to CIDCO and CIDCO started asking residents of building No.16, as to why they have formed a separate Association and that why documents such as no objection or no dues certificates were issued to members for facilitating transfer of flats. The activities of such aiding members were ultimately discussed in general body meeting of the Association on 03.02.2013, when a resolution was passed that legal action should be taken against such members who had used no objection/no dues certificates issued by the Association. The resolution also mentioned that such no objection/no dues certificates were apparently forged. The respondent who is resident of building No.16, felt offended by the contents of the resolution. He thought that the Society was making imputation against him that he was involved in committing offence of forgery. He has lodged this complaint.

3. The question is whether there is sufficient ground for proceeding against the office bearers of the Association under Section 500 of the I.P.C. In order to answer this, one must read Section 499 of the I.P.C. There are various exceptions provided in Section 499. The facts of this case referred to above would squarely fall within the provisions of first exception as well as the eighth exception. Assuming that accusation is made in the resolution and it is made against respondent No.1, it can safely be stated that such accusations were in good faith and such accusations were made before the general body which is lawful authority giving permission to start action. Unless and until such accusations are put forth in the general body meeting, a resolution cannot be passed. So putting forward the facts which amounted to imputation against any member in a general body meeting would not amount to defamation. It may also happen that after putting forward said imputation, the general body might decide not to initiate any action, even then such accusations would not amount to defamation. In this case, the accusations were made and were put forward before the general body meeting. That part of the action was not defamation. If the general body resolved to take action against wrong doer, it would still not amount to defamation because what is done so far was necessary for initiating action. On a perusal of the resolution it appears that no specific name is mentioned in it. The language used in it is also temperate. It does not appear that the

imputation in the resolution is made for harming any person mischievously or otherwise. The complaint deserves to be quashed.

4. The Petition is allowed. There shall be order in terms of prayer clause (a).

5. The Petition is disposed of.

(A.V. NIRGUDE, J.)