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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.469 OF 2013

Khushalsinh Ramlal Pardeshi ….Petitioner
versus
1. The State of Maharashtra
2. Shri Kalamuddin Shaikh ….Respondents

with

CRIMINAL WRIT PETITION NO.470 OF 2013

Bhagvat Govinda Gavande ….Petitioner
versus
1. The State of Maharashtra
2. Shri Kalamuddin Shaikh ….Respondents

with

CRIMINAL WRIT PETITION NO.1112 OF 2013

Mr. Chandrakant Dharmaji Shrikar ….Petitioner
versus
1. The State of Maharashtra
2. Shri Kalamuddin Shaikh ….Respondents

Mr. P. K. Dhakephalkar, senior advocate along with
Mr. M. S. Mohite i/b. Mr. J. G. Reddy, advocate for the petitioner in writ petition Nos. 469 and 470 of 2013.
Mr. S. V. Kotwal i/b. Mr. P. G. Kathane, petitioner in writ petition No. 1112 of 2013.
Mr. S. K. Shinde, PP along with Mr. S. V. Saste, APP for the State.
Mr. M. M. Najmi i/b. Mr. O. K. Shaikh, advocate for respondent No.2.

CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.

DATED : 21st JANUARY, 2015.

P.C.:

Heard Mr. P. K. Dhakephalkar, learned senior counsel for petitioners in writ petition Nos. 469 and 470 of 2013, Mr. Kotwal, learned counsel for the petitioner in writ petition No.1112 of 2013, Mr. Shinde, PP for respondent No.1 and Mr. Najmi, learned counsel for respondent No.2.

2. These petitions are filed under Article 226 of the Constitution of India read with provisions of Section 482 of the Criminal Procedure Code, 1973 for quashing the FIR bearing CR No. 11/13 registered with D.N.Nagar Police Station, Andheri (W), Mumbai for the offences punishable under Sections 408, 420, 465, 467, 468, 471, 120-B and 34 of the Indian Penal Code.

3. The above referred FIR is registered, at the instance of respondent No.2-Kalmuddin Shaikh against the petitioners and others. The petitioners in writ petition Nos.469 and 470 of 2013 were working as competent authority and Deputy Collector (Encroachment and Removal), Andheri West, Mumbai and the petitioner in writ petition No.1112 of 2013 is working as Tehsildar in the Office of Deputy Collector (Encroachment and Removal) and competent authority, Andheri, Mumbai.

4. The allegations made in the FIR are as follows:

The complainant along with his family members is residing in Room No.101, Kalamuddin Chawl, Near Roop Darshan Building, Wireless Road, Andheri West, Mumbai – 400 058. He owned a cattle-shed admeasuring about 40 x 15 ft. at Juhu Lane Zoppadpatti, N S.Phadke Marg, Andheri West, Mumbai – 400 058. He also owns a chawl consisting of six rooms, in which, his family members are residing. In the year 2000, survey of 295 slums in Juhu Lane Zoppadpatti was done for road construction project. Thereafter, in the year 2003 under the orders of MMRDA, SPARC -NGO again conducted survey of 750 slums and found that 442 slums are required to be demolished for the road construction project. In the year 2005, MMRDA itself conducted survey of 932 slums and thereafter an annexure II was prepared by the Deputy Collector (Encroachment and Removal), Andheri and sent to MMRD. Under this survey, only the slum dwellers residing prior to 1.1.2000 were held to be eligible for alternative accommodation.

In the year 2006, Executive Engineer of MMRDA issued notice to the complainant and other slum dwellers calling upon them to show evidence of their residence. The complainant replied to the said notice along with relevant documents. The Executive Engineer of MMRDA, thereafter, sent the documents to the Deputy Collector(Encroachment and Removal) for preparation of annexure II. The petitioner in writ petition No.470 of 2013, thereafter, prepared annexure II without verifying the documents and sent it to MMRDA.

The complainant, in lieu of cattle-shed got an alternative premises viz. Shop No.8, Building N.R.8, Milan Co-operative Housing Society, Ram Mandir Oshiwara Road, Goregaon West. However, he did not get an alternative accommodation in respect of his and his family members residential accommodation. On enquiry in the Collector's Office, the complainant was told that his and his family members' names are not included in annexure II and he was directed to approach the Collector's Office. The complainant, thereafter, met petitioner in writ petition No.470 of 2013 and Mr.Manohar Patil, Nayab Tehsildar and the petitioner in writ petition No.470 of 2013 told the complainant to meet 1) Mr. Anvar Azmi 2)Mr. Kadir Noorani 3)Mr.Abdul Faiz Badruddin 4) Mr. Isuf Shaikh 5)Mr. Anvar Mangavkar and 6) Mr.Jaffar Bangali and if these persons approve, then, he will make his slums eligible for alternative accommodation. The complainant accordingly met 1)Mr. Anvar Azmi 2) Mr,Kadir Noorani 3)Mr.Abdul Faiz Badruddin 4) Mr.Isuf Shaikh 5)Mr. Anvar Mangavkar and 6) Mr.Jaffar Bangali and these persons told the complainant that in order to make his slum eligible for alternative accommodation, he has to pay an amount of Rs.50,000/- per slum. After transfer of petitioner in writ petition No.470 of 2013, the complainant met petitioner in writ petition No.469 of 2013, but, he also told the complainant to meet the above persons. The complainant, thereafter, on the basis of information obtained under Right to Information Act found that one Mr. Liyakat Shaikh was given alternative accommodation in lieu of Slum No.166 which belonged to him. The complainant also found that one Abdul Faizuddin, Mohammad Juber Noorani and N.Punnu Pillai also got alternative premises on the basis of bogus documents.

The complainant further found that seven persons viz. Nazir Shaik, Meharunissa Shaikh, Sajida Bashir Shaikh, Haneef Shaikh, Ishaaq Kazi, Mohamad Yunus Shaikh and Mohomad Wase were also held to be eligible for alternative accommodation on the basis of bogus documents. The complainant further stated that one Shaikh Hakeen and Shaikh Kayyum Haneef also got alternative accommodation on the basis of bogus documents.

In short, it is the contention of the complainant that the above referred six persons took Rs.50,000/- per slum and prepared bogus documents and, on the basis of these bogus documents, the petitioners included the names of bogus slum dwellers in annexure II and submitted to MMRDA and MMRDA without verifying those documents allotted alternative accommodations to these ineligible slum dwellers thereby causing loss of crores of rupees to the Government.

5. The stand of the petitioners as reflected in the petition is that the area of Juhu Lane/Wireless Road was taken up for road construction project in the year 2006 by MMRDA. Prior to that, the Municipal Corporation of Greater Mumbai (MCGM) was to construct 120 ft. D.P.Road at the said place. However, MMRDA took over the project from MCGM. The road was already completed and was made available for public use since 2009. Initially, the preliminary survey of slums was completed by SPARC and thereafter the survey was completed by

Constuma Consultancy in the year 2005. On the basis of this survey, the documents were verified by the competent authority and annexure II was prepared for allotment of alternative suitable accommodation to the project affected persons.

6. One Liyakat Shaikh filed public interest litigation No.49 of 2008 alleging that, in fact, 768 structures were project affected, however, the MMRDA per annexure II indicated 932 persons as affected by the project. Thus, it was alleged that extra persons, who were not eligible were also included in the annexure II. The said PIL was disposed of by this Court on 8th July, 2010 with direction to the competent authority to examine the claim of each and every applicant by verifying the authenticity of the documents like voters card, ration card, electricity bill for the period prior to 1.1.2000 and prepare a list of project affected persons.

7. The competent authority, thereafter, initiated fresh inquiry of verifying the documents to decide the eligibility of the project affected persons to get alternative accommodation and, on inquiry, it was found that out of 768 occupants, 101 occupants were found ineligible. Accordingly, report was submitted to the High Court, which was accepted by the High Court by its order dated 17th April, 2012. The said Liyakat Shaikh filed contempt petition alleging breach of order passed in PIL. However, the same was dismissed. The complainant, thereafter, filed writ

petition No.3444 of 2012 for seeking direction against the Government to register an offence as per his complaints addressed to Economic Offence Wing. However, there is not a single allegation against the present petitioners. Despite above, the complainant filed the above referred FIR against the petitioners and others.

8. The petitioners stated that, as a matter of fact, the allegations made by the complainant about Liyakat Shaikh is concerned, same is not correct as he was held to be ineligible. The petitioners contended that Abdul Faiz Badruddin and N. Pannu Pillai were held to be eligible on the basis of documents submitted by them. However, Mr. Mohd. Zuber Noorani was held ineligible. So far as seven persons viz. Nazir Shaik, Meharunissa Shaikh, Sajida Bashir Shaikh, Haneef Shaikh, Ishaaq Kazi, Mohamad Yunus Shaikh and Mohamad Wase are concerned, it was contended that out of these seven person, three persons were declared ineligible and four persons were declared eligible on the basis of documents. In short, it is the contention of the petitioners that they are the Quasi Judicial Authority and they have decided the eligibility and prepared annexure II in pursuance of orders of the High court on the basis of documents submitted by the concerned slum dwellers.

9. Mr. Shinde, learned PP submitted that the investigating officer did not find any substance, nor is there any material against the

petitioners about the allegations under the Prevention of Corruption Act, 1988 and, therefore, respondent No.2's complaint was not registered under the said Act.

10. The legal position with regard to exercise of jurisdiction of the High Court for quashing the FIR is by now well settled. The following propositions of law are laid down by the Apex Court in ***R.Kalyani v.Janak C. Mehta (2009) 1 SCC 516:-***

> *(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.*
>
> *(2) For the said purpose the Court,save and except in very exceptional circumstances, would not look to any document relied upon by the defence.*
>
> *(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.*
>
> *(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.*

In ***Mahesh Chaudhary v.State of Rajasthan (2009) 4 SCC 443,*** the Apex Court stated the law thus :

> *"11. The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceeding is well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence."*

11. In the light of ratio of above decision of the Apex Court, we find that the allegations mentioned in the FIR even if on face value are taken to be correct in their entirety, does not disclose commission of an offence. The complainant alleged that the petitioner in writ petition No.470 of 2013 directed him to approach six persons viz. 1)Mr. Anvar Azmi 2)Mr,Kadir Noorani 3)Mr.Abdul Faiz Badruddin 4) Mr.Isuf Shaikh 5)Mr. Anvar Mangavkar and 6) Mr.Jaffar Bangali if he want to make his slum eligible for alternative accommodation and after meeting these six persons, he was told to pay Rs.50,000/- per slum for making the slums eligible for alternative accommodation. He has also alleged that the petitioner in writ petition No.469 of 2013 also directed to meet those six persons. He further alleged that these six persons have collected Rs.50,000/- from several slum dwellers and with the help of the petitioners those slum dwellers were made eligible for alternative accommodation. In this

regard, Mr.Shinde, learned PP submitted that no substance was found in the allegation against the petitioners under Prevention of Corruption Act and, therefore, FIR is not registered under the said Act.

12. Rest of the allegations in the complaint are that the persons named in the complaint though not eligible for alternative accommodation, their names are included in annexue II and held to be eligible for alternative accommodation on the basis of forged documents and these forged documents are prepared by the above mentioned six persons by taking Rs.50,000/- for each slum. The petitioners, in this regard, contended that that out of seven persons, three persons were declared ineligible and four persons were declared eligible on the basis of documents produced by these persons which were later on verified by the concerned department.

13. As stated above, the allegations in the complaint is that ineligible persons were held eligible on the basis of bogus or forged documents. It is not the allegation that the petitioners who are the Government servants and competent authority have prepared these bogus or forged documents. The allegation is that six persons mentioned above, by taking Rs.50,000/- from each of the slum dwellers, have prepared bogus and forged documents and, on the basis of these documents the ineligible slum dwellers were held to be eligible for alternative accommodation.

14. It is the case of the petitioners that their duty was to prepare annexure II after verifying the documents submitted by the concerned slum dwellers and ultimately allotment of alternative accommodation was to be made by the MMRDA. The complaint also reveals that the petitioners' only prepared annexure II and allotment of the alternative accommodation was made by the MMRDA. The allegation of the complainant is that the alternative accommodation was obtained by ineligible slum dwellers by submitting bogus documents which were prepared with the help of the above mentioned six persons. The complaint does not disclose that the bogus documents were prepared by the petitioners. The petitioners prepared the list of eligible persons in discharge of their statutory function and this decision can be challenged in an appeal under Section 35 of Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971.

15. The complainant alleged that though he was eligible for alternative accommodation in respect of residential accommodation, he was held ineligible. If that be so, then, the complainant was always at liberty to challenge the said decision of the competent authority refusing to give alternative accommodation in lieu of residential premises.

16. In the facts and circumstances of the case, we find that the FIR/complaint even if taken to be correct in its entirety, the same does not disclose commission of offence as against the petitioners. The same, therefore, deserves to be quashed. The petitions are, accordingly, allowed in terms of prayer clause (a) and are disposed of as such.

(ANUJA PRABHUDESSAI, J.) **(RANJIT MORE, J.)**