

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1955 OF 2014

Suresh Chaturbhuj Manek .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr. S. R. Gaud, Advocate for the petitioner

Smt. A. A. Mane, APP for the respondent-State.

Mr. Ashok Mundargi i/b Hrishikesh Mundargi, Advocate for the respondent No. 2.

CORAM:-M.L. TAHALIYANI, J.
DATED : -12/03/2015

P.C.

Heard Mr. Gaud, the learned counsel for the petitioner, learned Senior Counsel for respondents No. 2 and 3 and Smt. Mane, learned APP for the respondent-State.

2 Perused the impugned order passed by the learned Addl. Sessions Judge and the order passed by the learned Magistrate. The petitioner is the complainant in Criminal Case No. 57/PW/2012, pending in the Court of Metropolitan

Magistrate, 15th Court, Mazgaon, Mumbai.

3 It appears that respondents No. 2 and 3 were named in the FIR No. 30 of 2011. However, the police did not file charge-sheet against them and they were named as witnesses in the charge-sheet. The petitioner was aggrieved by non-inclusion of respondents No. 2 and 3 as '*accused*' in the charge-sheet. He made an application before the learned Magistrate for adding them as an '*accused*', in the case arising out of Crime No. 30 of 2011 of Kala Chowki Police Station, Mumbai, for the offences punishable u/ss. 456,467,469,471 and 420 r/w 34 of IPC. During the course of recording of the evidence of the petitioner, order was passed by the Magistrate summoning the respondents No. 2 and 3. The said order was challenged by respondents No. 2 and 3 before the learned Sessions Judge. The learned Addl. Sessions Judge set aside the order passed by the learned trial Magistrate and discharged respondents No. 2 and 3. It is this order of the learned Addl.

Sessions Judge, which is being challenged in the present petition.

4 I have gone through both the orders. In fact the order passed by the learned Magistrate is so absurd and vague that the learned Addl. Sessions Judge should have refused to entertain the revision application on merits. I really fail to understand as to why the learned Addl. Sessions Judge did not direct the learned Magistrate to pass order which may make some sense. The order does not make any sense and it can be seen if the same is reproduced as under:

“Perused case papers and evidence of the complainant. After going through the documents placed on record. It appears that, the office bearers of the Prakash Industrial Premises Co-op. Society were well aware about the letter issued by the Sales Tax Department in respect of the disputed shop. In spite of the same they accepted the dues of the Society from the complainant. So also the accused intimated to the Society that, he sold the said flat to

the complainant. Inspite of the same Society not raised objection for said transfer though they were directed by the Sales Tax Department to stop the transfer. So also the Officer bearers of the Society not intimated the said fact to the complainant. Therefore complainant made out prima facie case to proceed against Chairman and Secretary of Prakash Industrial Premises Co-op. Society. Therefore Issue process against Chairman Mr. Surendra Shah and Narayansen Gupta, Secretary of Prakash Industrial Premises Co-op. Society U/sec. 319 of Cr. P.C.”

5 It is thus clear that the learned Magistrate himself was not clear as to what charges respondents No. 2 and 3 were required to answer. Therefore, the order, in fact, could be called as 'no order' at all. Neither the ingredients of the offences nor the sections under which the the particular acts of the respondents No. 2 and 3 could be covered have been mentioned in the order. I really fail to understand as to what charges could have been framed against the respondents No. 2

and 3, had they appeared before the learned trial Magistrate, in obedience of the summons issued by him.

6 In view thereof, order of learned Addl. Sessions Judge is maintained. Respondents No. 2 and 3 have been discharged rightly by the learned Addl. Sessions Judge.

7 I do not find any merits in the petition. The petition is disposed of.

8 However, the learned Magistrate shall be always at liberty to reconsider the prayer of the petitioner. It is made clear to the learned Magistrate that, if he wanted to pass any order on the application of the petitioner, it should be clear as to what offences could be made out against respondents No. 2 and 3 and on what basis.

(JUDGE)

md.saleem