

Sequeira

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

CRIMINAL APPLICATION NO.798 OF 2015

Mrs.Pervin J.Irani & ors.

...Applicants

Versus

State of Maharashtra & anr.

...Respondents

.....

Mr.Ishan S.Jani, for Applicants.

Mr.Rajesh More, APP for Respondent -State.

Mr.H.C.Pimple, for Respondent No.2.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 19th NOVEMBER, 2015.**

P. C. :

The Applicants have invoked the inherent powers under Section 482 of the Code of Criminal Procedure, to challenge the legality of the order dated 25th September 2014 whereby the learned 41st Court at Shindewadi, Dadar Mumbai has issued process against the Applicants for the offences under section 381 read with section 471 of the Mumbai Municipal Corporation Act, 1888.

2. The brief facts necessary to decide this application are as under -

The Respondent No.2 had filed a Complaint dated 25th September 2014 before the learned Metropolitan Magistrate's 41st Court at Shindewadi, Dadar Mumbai alleging that the Applicants herein and one Vijay Gupta had violated the provisions of section 381 read with section 471 of the Mumbai Municipal Corporation Act, 1888 (the 'Act'). The learned Magistrate by order dated 25 September 2014 issued process against the Applicants and one Vijay Kumar Gupta for offence under section 381 r/w section 471 of the Act. Mr Vijay Gupta had challenged the order by filing Criminal Application No.1280 of 2014 and that by order dated 24 March 2015, process issued against said Vijay Gupta has been quashed.

3. Heard the learned counsel for the Applicants and the learned counsel for the Respondents. It was alleged that there was leakage in flat no.12 of Gul Manor Co-op Housing Society, Colaba. Upon inspection, a notice was served on the Applicants and Vijay Kumar Gupta, the occupant of flat no.29 to remove the nuisance. Having failed to remove the nuisance, complaint was filed by

Respondent No.2 against the Society, the chairman, the secretary and said Vijay Kumar for offence under section 381 r/w 471 of the Mumbai Municipal Corporation Act.

4. The learned Magistrate issued the process by order dated 25 September 2014. The said order was challenged by Vijay Kumar Gupta in Criminal Application No.1280 of 2014. The said application was allowed by this Court by order dated 24 March 2015 and the prosecution pending against said Vijay Kumar was quashed.

5. A perusal of the said order reveals that the process issued against Accused no.1 who is the occupant of the flat has been quashed mainly on the ground that notice as well as the complaint is vague and does not show the nature of alterations and additions carried out by the Accused No.1 Vijay Kumar to his flat and as to how he was responsible for the alleged nuisance.

6. The Applicant No.3 herein is the Society and the Applicant Nos.1 and Applicant Nos.2 are the Chairman and the Secretary of

Applicant No.3 Society. A perusal of the complaint reveals that there are no specific averments in the complaint against the Applicants. No specific role is attributed to them indicating that they are in any manner responsible for causing the nuisance as alleged. In my considered view the complaint does not prima facie disclose any offence against the Applicants. Continuation of such proceedings would be abuse of process of law.

7. Hence the Application is allowed. The impugned order dated 25th September 2014 passed by the learned Metropolitan Magistrate's 41st Court at Shindewadi, Dadar Mumbai, is quashed and set aside. Consequently, process issued against the Applicants under section 471 of the Mumbai Municipal Corporation Act 1888 is quashed and set aside.

(ANUJA PRABHUDESSAI, J.)