

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1530 OF 2000

1) Dakkhan Pat Bandhare Mandal Madhya	}	
Sah. Griha Rachana Sanstha Myd.	}	
Through its Chairman and Ors	}	
	}	
2) Mr. Shankar Vyankatrai Raikar	}	
R/at Bhamburda, S. No. 208/209	}	
Bldg. No. 1, Flat No. 2, Dakkhan Pat	}	
Bandhare Hsg. Society, Pune -5	}	
(Range Hills)	}	
	}	
3) Mr. Shivajirao V. Bawane	}	
R/at Dakkhan Pat Bandhare Hsg. Society	}	
Bhamburda, S. No. 288, Bldg. No. 1,	}	
B.M.C.C. Road, Pune-4.	}	
	}	Petitioners
4) Mr. Shivdas Rangnath Salunke	}	
R/at Dakkhan Pat Bandhare Hsg. Society,	}	
Triveni, 36/1 Erandavane, Pune-38.	}	
	}	
5) Mr. Ravindrakumar A. Todkar	}	
R/at Dakkhan Pat Bandhare Hsg. Society,	}	
S. No. 281, Deep Bunglow Chowk, Pune-16	}	
	}	
6) Mr. Shrikrishna Tanaji Nagarkar	}	
R/at Dakkhan Pat Bandhare Hsg. Society,	}	
Bhamburda, S. No. 208/209 155/12, Range	}	
Hills, Pune-5.	}	
	}	
7) Mr. Ramchandra Ranghunath Chorage	}	
R/at Dakkhan Pat Bandhare Hsg. Society,	}	
Bhamburda, S. No. 280, Bldg. No; D1	}	
Flat No. 7, Dnyaneshwar Paduka Chowk, Pune-4	}	

V/s.

1) Mrs. Rajashree R. Tungare	}	
R/at S. No. 35, Raghavendranagar,	}	
Kharadi, Pune – 14	}	
	}	
2) State of Maharashtra	}	
	}	
3) Mr. Ratnakar Balkrishna Kulkarni	}	
R/at Dakkhan Pat Bandhare Hst. Society,	}	Respondents
S. No. 280, Bldg. No. 6, Flat No. 2,	}	
Dnyaneshwar Paduka, Chowk, Pune-4	}	
	}	
Ms. Varsha Palav a/w Mr. Ajinkya Palav	}	
i/b The Laureate Advocate for Petitioner	}	
Nos. 3 to 5 & 7.	}	
None for Respondent nos. 1 & 3.	}	
Ms. A. T. Jhaveri APP for the State.	}	

CORAM : RAVINDRA V. GHUGE, J.

DATED : JULY 7, 2016.

JUDGMENT:

1) Petitioners are aggrieved by the order of issuance of process and the order dated 11/08/1998 passed by the learned Magistrate. The Petitioners are also aggrieved by the order dated 16/08/1999 by which summons were issued in R.C.C. No. 299 of 1999. Petitioners are also aggrieved by the order dated

ism

21/09/2000 in Revision Petition No. 522 of 1999.

2) This petition was admitted on 19/09/2000 and interim relief in terms of prayer clause (C) was granted.

3) Despite several opportunities, none had appeared on behalf of Respondent nos. 1 & 3. Learned APP appears on behalf of Respondent no. 2.

4) The submissions of the learned Advocate for the Petitioners can be summarized as follows:

(a) Respondent no. 1 herein namely Rajashree R. Tungare was a member of the Petitioner no. 1 Society.

(b) Petitioner no. 1 Society comprises of government employees.

(c) Considering the constitution of the Society and the purpose for which it was formed, the District Collector was to allot the flats to each of the members who may have applied, depending upon their income.

(d) Respondent no. 1 wanted a larger sized flat.

(e) Respondent no. 1 started complaining to several authorities.

(f) Feeling harassed by the acts of Respondent no. 1, Petitioner no. 1 Society expelled Respondent no. 1 on 19/12/1993.

(g) Thereafter, the first Respondent filed Dispute No. 142 of 1990 before

learned Co-operative Court, praying for a larger flat.

(h) The expulsion was challenged before the Registrar, Co-operative Society and by order of the Registrar, the expulsion was approved.

(i) Respondent no. 1 challenged the approval in Appeal No. 48 of 1996 before the Joint Registrar, Co-operative Society Appeals, Pune Division.

(j) The litigating sides i.e. Respondent no. 1 and the Petitioners entered into a compromise on 27/11/1997 by which Respondent no. 1 was to withdraw the cases filed by her and bring a complete end to litigation between the parties and the Petitioner Society agreed to recall her expulsion and allot her the flat as per the compromise terms.

(k) Based on the compromise terms, Suit No. 142 of 1990 before Co-operative Court was disposed of in terms of the said compromise.

(l) By order dated 12/01/1998, the Joint Registrar, Co-operative Societies Appeals, disposed of Appeal No. 48 of 1996 filed by Respondent no.1 in the light of the compromise terms agreed between the parties, subject to the approval by the General Body Meeting.

(m) In the General Body Meeting dated 13/12/1997, a resolution was passed that Respondent no. 1 shall have to pay the entire expenses incurred by

the Society in contesting the cases filed by her, that she should deposit the said amount and submit an affidavit, accepting the terms and conditions which are part of the compromise terms.

(n) Respondent no. 1 then moved an application dated 10/05/1998, praying for reconsideration of the resolution passed.

(o) Thereafter, Respondent no. 1 preferred Criminal Complaint No. R.C.C. No. 299 of 1999 on 01/07/1998 (Old No. 2370 of 1998) alleging that the Petitioners had cheated her and have therefore, committed an offence punishable under section 420 of Indian Penal Code.

(p) None of the Petitioners have committed any such acts as has been alleged by Respondent no. 1.

(q) The ingredients for attracting Section 420 of Indian Penal Code are missing and hence, the learned Magistrate could not have passed the impugned order dated 27/09/1999, thereby issuing process against the Petitioners.

(r) The appeal filed by 1st Respondent was disposed of by observing that settlement terms would be subject to approval of the General Body Meeting.

(s) None of the Petitioners have cheated the 1st Respondent.

(t) Respondent no. 1 is in the habit of initiating litigation and the present pending litigation is a result of the intention of Respondent no. 1 to harass the Petitioners.

(u) Prima facie, no offence has been made out by the 1st Respondent in her complaint and therefore this petition be allowed and order of issuance of process and the orders set out in prayer clause (b), (c) & (d) be quashed and set aside.

5) I have considered the submissions of the learned Advocate for the Petitioner and have gone through the record available with her assistance.

6) Complaint filed by the 1st Respondent is with regard to alleged cheating and an offence which is said to have attracted Section 420 of Indian Penal Code. Section 420 of Indian Penal Code reads as under:

“Cheating and dishonestly inducing delivery of property – Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”.

7) It is therefore, evident that the 1st Respondent is required to make out a

ism

prima facie case in her complaint as regards the act of cheating and dishonestly inducing her to deliver any property to any person. Respondent no. 1 has specifically contended in her complaint that on the strength of the compromise terms, she was made to believe that she would be allotted a flat, admeasuring 433 Sq. Ft. and consequentially she was induced to give up her claim for the 'C' type flat. It is stated that the allotment was confirmed by the Petitioner Society and she therefore gave up her claim of the 'C' type flat, in anticipation of being handed over the possession of the 'B' type flat. However, the Petitioners thereafter, imposed new conditions in the General Body Meeting held on 10th May 1988 and on the one hand, have induced her to give up her claim and on the other hand, have not given the possession of the 'C' type flat.

8) It emerges from the record that the Petitioners had entered into a compromise with the 1st Respondent and this aspect is evidenced by the compromise/consent terms. I do not find any statement in the consent terms that the Petitioners are signing the said terms tentatively and which would be subject to ratification by the General Body or Special Body Meeting of the Society. The consent terms unequivocally render a meaning that the Petitioner Society has settled the dispute with Respondent no. 1 and neither of the

ism

parties are required to approach any other body or Authority for the implementation of the said terms. The least that was expected was that the parties to the consent terms would comply with those conditions which expected them to act as set out in the said terms.

9) It also emerges from the record that Respondent no. 1 gave up her claim for possession of the 'C' flat to the Petitioner Society and in return she was not handed over the possession of the 'B' type flat as was agreed upon.

10) The learned Advocate for the Petitioner has strenuously contended that since the Joint Registrar, Co-operative Societies Appeals had disposed of Appeal No. 48 of 1996, subject to the compromise terms and subject to the approval by the General Body Meeting, Petitioners had placed the issue before G.B.M. Hence, no fault can be found with the Petitioners.

11) I find the said submissions to be fallacious for the reason that the appeal before the Joint Registrar was limited to the extent of the expulsion of the 1st Respondent. The dispute as regards the types of flats and the entitlement of the 1st Respondent to a larger flat was the subject matter of the dispute before the Co-operative Court. By the order of the Co-operative Court, Suit No. 142 of 1990 was disposed, exclusively in terms of

compromise/consent.

12) In my view, therefore, the Petitioners were not required to place the said issue before the General Body Meeting, notwithstanding the observations of the Joint Registrar, Co-operative Societies Appeal, more so since the parties had unequivocally agreed to the terms and it was nobody's case that the consent terms would not be brought into effect till they are ratified by the General Body Meeting.

13) By the impugned order dated 27/09/1999 of issuance of process and after conducting a due enquiry under Section 202 of Code of Criminal Procedure, 1973, the learned Magistrate noted that Respondent no. 1 was induced by the Petitioners to part with the property, wrongfully. *Prima facie*, the conclusion was arrived at by the learned Magistrate after considering that the Petitioner would hand over the possession of the other flat. The learned Magistrate, therefore came to the conclusion that the original complainant was induced to part with the property, on the basis of the consent terms.

14) In the light of the above, I do not find that the impugned order dated 27/09/1999 passed by the learned Magistrate and the impugned Judgment and Order dated 21/09/2000 delivered by the learned 3rd Additional Sessions

Judge, Pune in Criminal Revision Application No. 522 of 1999, could be said to be perverse or erroneous.

15) This petition being devoid of merit is therefore dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)