

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1392 OF 2002

Shailesh A. Pathare & Ors. ... Petitioners
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. N.V. Sawant, Advocate for the petitioners.
Mr. V.V. Gangurde, APP for respondent no. 1/State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **16th December, 2016**

P.C.:

None present for respondent no. 2 though served and though the matter appeared on the board of Final Hearing thrice.

2. The petitioners were the office bearers of one Hema Park Cooperative Housing Society at Bhandup. Respondent no. 2 is occupant of Flat No. 2/A/103. He was given a letter dated 1st September, 2000 by the Society that the arrears towards the maintenance was due from him. According to respondent no. 2/complainant, he had paid all the amount. Thereafter the Society displayed the list of the defaulters on the notice board wherein flat number of respondent no. 2 was shown. Respondent no. 2 thereafter filed a private complaint under sections 500 and 385 r/w. 34 of Indian Penal Code before the Magistrate, pursuant to which the learned Magistrate issued process under the relevant sections. Hence, the Petition was filed challenging the said process.

2. The learned counsel for the petitioners submitted that an amount of Rs.7,800/- was due towards maintenance charges from respondent no. 2 which was rightfully claimed by the Society. The list of all the flats against which the arrears towards maintenance were due were displayed. The Society subsequently filed recovery proceedings under section 101 of the Maharashtra Cooperative Societies Act and recovered the said amount from respondent no. 2. Thus, there is no offence committed by the petitioners.

3. None present for respondent no. 2 when the matter is called out.

4. The learned APP submits to the order of the Court.

5. In view of the submissions of learned counsel for the petitioners and on perusal of the complaint, I am of the view that no offence is made out under sections 500 and 385 of Indian Penal Code. Hence, rule is made absolute in terms of prayer clause (a).

(MRIDULA BHATKAR, J.)