

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1224 OF 2003**

Girish Rameshwar Mahajan & Ors. ...Petitioners

Versus

Chandrakant Mahadeo Vaidya & Ors. ...Respondents

...

Mr. Pankaj Das for the Petitioners.

Mr. H.J. Dedia, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 1st OCTOBER, 2016

P. C. :

The Petitioners herein have challenged order dated 17th May, 2003 whereby the 5th Joint Judicial Magistrate, First Class, Thane, in Criminal Case No.613 of 1998 has convicted them of offence punishable under section 427 of the IPC and sentenced to pay fine of Rs.30 each i/d. SI for seven days.

2. Heard the learned counsel for the Petitioners and the learned APP for the Respondent -State. Respondent Nos.1 and 2 are not present despite due service.

3. I have perused the records and considered the submissions

advanced by the learned counsel for the Petitioners and the learned APP for the Respondent -State.

4. The records reveal that the Respondent No.1 had lodged a private complaint alleging that on 8.2.1998, the Petitioners herein had removed his antenna. Based on the said allegations charge was framed against the Petitioners for offences punishable under sections 403, 427(1) r/w. 34, 109, 114 and 120 B of the IPC. The Respondent No.1 had examined himself and another witness i.e. Secretary of Suyojit Co.operatvie Housing Society. The learned Magistrate did not rely upon the testimony of PW2- Ajay, Secretary of the said Society. However, based on the evidence of the complainant, the learned Magistrate held the Petitioners guilty of offence punishable under section 427 of the IPC and sentenced them to pay fine of Rs.30 each i/d to undergo SI for 7 days.

5. The term mischief as defined under section 425 of the IPC reads as under :-

425. **Mischief-** Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the

situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

6. A plain reading of the definition makes it clear that the intention to cause, or knowledge that the person is likely to cause wrongful loss or damage is an essential ingredient of the offence. In the instant case the averments made in the complaint merely state that the Petitioners herein had given a legal notice to the Respondent /complainant to remove the Antenna and thereafter they had removed the same. The complaint does not contain any averments to indicate that the Petitioners herein had intention to cause or knowledge that wrongful loss or damage was likely to be caused to the Respondent /complainant. The complaint therefore, does not disclose the essential ingredient of the offence.

7. The impugned judgment reveals that defence of the Petitioners was that they had removed the Antenna pursuant to the resolution passed by the Society wherein it was decided to carry out extensive repairs to the building and install a common antenna and for which each member was required to pay Rs.600/- per flat and each member of the said society was intimated vide circular dated 5th January, 1993. It is stated that Respondent No.1 had raised certain

objections to the said resolution and subsequently Respondent No.1 approached 5th Co-operative Court, Mumbai and challenged circular dated 5th January, 1993 whereby the Society had informed the members about its decision of installing common antenna and discontinue use of individual antenna to restrict the damage to the parapet wall and to prevent leakage in the building. On 30.4.1993 the learned 5th Judge, Co-operative Court vacated the ad-interim relief granted in favour of the complainant and subsequently on 18.12.1993 the Society passed resolution in the Annual General Meeting in respect of the removal of the common antenna. By order dated 31.3.1995 the Co-operative Court restrained the Society from removing the existing antenna. The Society challenged the said order by filing appeal No.213 of 1995 and by order dated 17th October, 1997 the appeal filed by the Society was allowed and the judgment passed by the Judge, Co-operative Court, Mumbai, restraining the Society from removing the antenna was set aside. Thereafter on 8.2.1998 the Society informed the Respondent No.1 that in terms of resolution dated 18th December, 1993 the Society has decided to remove the existing antenna and thereafter the Society shifted the said antenna.

8. A perusal of the complaint as well as the material on record

reveals that the Petitioners, who are the committee members of the society had removed the antenna as per the society resolution to prevent leakage and damage to the parapet-wall. The complaint as well as the evidence does not spell out essential ingredients of the offence of 'cheating' within the meaning of section 425 of the IPC. Consequently, the Petitioners could not have been held guilty of offence under section 427 of the IPC.

9. Under the circumstances, the order dated 17th May, 2013 in Criminal Case No.613 of 1998 is quashed and set aside. The Petitioners-accused are acquitted of offence punishable under section 427 of the IPC. Fine amount, if already deposited be refunded to the Petitioners.

(ANUJA PRABHUDESSAI, J.)