

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2016 OF 2016

Sachin Shridhar Dhawan & Anr. ... Petitioners
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. Niranjan S. Mundargi, Advocate for the petitioners.
Ms. Amita Kuttikrishnan, Advocate appointed for respondent no. 2.
Mr. V.B. Konde-Deshmukh, APP for the respondent/State.
Dr. Devendra Kumar Tyagi, respondent no. 2 present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **13th December, 2016**

P.C.:

Rule. By consent, rule is made returnable forthwith.

2. In this Writ Petition, the order of learned Additional Chief Metropolitan Magistrate, 5th Court, Dadar dated 3rd June, 2015 in C.C. No. 44/PW/2004 and the order of the learned Additional Sessions Judge, Greater Mumbai dated 21st March, 2016 in Criminal Revision Application No. 881 of 2015 are challenged. These petitioners are prosecuted before the Magistrate for the offences punishable under sections 465, 468, 471, 474, 341 and 420 of Indian Penal Code and under section 146(p) of the Maharashtra Cooperative Societies Act. The petitioners are the office bearers of a Cooperative Housing Society. Petitioner No. 1/accused was a Secretary in the years 1995 and 2001 and accused/petitioner no. 2 was the member of the Managing Committee in the year 1995 and Chairman of

the Cooperative Housing Society in 2001. Respondent no. 2/original complainant is the son of one Late Rameshwari Tyagi, who was the owner of Flat no. 357, Building no. 22 in the said Society. She expired on 18th July, 2001. However, she filled up nomination form and had nominated her son, i.e., respondent no. 2 on 27th November, 1995. After her death, respondent no. 2/original complainant contacted the office bearers, i.e., accused persons and asked them about the record of the flat, as he was aware that he alone was nominated by his late mother. The petitioners did not cooperate. It is further submitted that thereafter the Deputy District Registrar of Cooperative Societies visited the office of the Society and checked the nomination register wherein they found entries from 1 to 15 in respect of other flats but entry of Flat No. 357 was missing. It was contended by respondent no. 2/original complainant that when information in respect of his exclusive nomination made by his mother in his name and the information in respect of heirship though was available with the Society, the Society did not handover the necessary documents which was requested by him and instead of the original nomination register, duplicate nomination register with forged entries was produced before the Registrar. It is his contention that with an ulterior motive, the duplicate register was created to deprive him of his legal right in the said property and to cause him wrongful loss.

3. The learned counsel Mr. Mundargi for the petitioners submitted that after the death of the mother of respondent no. 2, when he approached the Society, the petitioners could not show the original nomination register, as it was misplaced. At the time of inspection by the Deputy District Registrar of Cooperative Societies on 14th March, 2002, the accused/petitioners produced the duplicate register wherein the name of respondent no. 2 and details of the impugned flat were not mentioned because the office bearers wanted information about other legal heir of Late Mrs. Rameshwari Tyagi. However, in the original document, the name of respondent no. 2 and details of the flat were mentioned earlier. When accused no. 2/Chairman and accused no. 1/Secretary found the old register, they informed the District Deputy Registrar by the letter dated 27th May, 2002 that respondent no. 2 was nominated for flat no. 357. The learned counsel further submitted that by letter dated 31st May, 2002 the petitioners informed respondent no.2 Dr. Tyagi that he is nominated by his mother for Flat No. 357 and also asked him to fill up Membership form No. 16. They further sent the reminder dated 7th July, 2002. Thereafter, respondent no. 2 lodged FIR on 28th June, 2003. He further submitted that respondent no. 2 was always with the possession of the said flat. The petitioners were not at all beneficiary of the said flat.

4. Respondent no. 2/original complainant has submitted that the

petitioners had deliberately tried to suppress the material information by not giving inspection of the original nomination register. The petitioners/accused wanted to create third party right in the flat and also to give away his flat to other persons so that he would suffer loss of property. He submitted that the act of the petitioners to hide the original nomination register was not innocent but it was intentional. They were grilled by the police at the police station and thereafter they produced the original register and they also had to seek anticipatory bail, as they apprehended arrest. He argued that the petitioners deliberately questioned him about the death of his mother and tried to mislead the Registrar Cooperative Society and the Court. He argued that the offences of forgery and cheating are made out. He defended the orders of the learned Magistrate of issuance of process and also relied upon the order passed by the learned Sessions Judge.

5. Perused the order passed by the learned Magistrate under section 239 dated 3rd June, 2015 and the order dated 21st March, 2016 passed by the learned Additional Sessions Judge, Greater Mumbai. I have also perused the FIR so also the correspondence between the accused and the complainant which forms a part of the charge sheet. It is not disputed that the nomination of respondent no. 2 alone was deleted. In the original nomination register in the year 1995, Mrs. Rameshwari Tyagi, mother of

respondent no. 2, has made the nomination of respondent no. 2 alone. A nomination form was submitted by her on 27th November, 1995, however, duplicate nomination register which was produced by the petitioners does not show entry of nomination of present respondent no. 2. The inspection of the documents and the record of the said Cooperative Society was conducted on 14th March, 2002 by District Deputy Registrar of Cooperative Societies is not disputed by either of the parties. At that time, a stand was taken by the petitioners/accused that the original nomination register was misplaced and therefore, they prepared a duplicate register, however, the original register was found after two months and, therefore, by letter dated 27th May, 2002, they informed the Registrar that Mrs. Rameshwari Tyagi has filed the nomination in favour of her son Dr. D.K. Tyagi, i.e., respondent no. 2. They have also informed the Registrar that they will be inviting the application for nomination Form no. 16 from respondent no. 2. The letter dated 31st May, 2002 was in fact sent by the petitioners to respondent no. 2 requesting him to apply for membership under Bye-law no. 36 of the Cooperative Society. Thereafter another reminder dated 7th July, 2002 was sent to him. However, respondent no. 2 lodged FIR against the present petitioners in April, 2003. As per the submissions of learned counsel for the petitioners, respondent no. 2 was in possession of the impugned flat and he was never deprived of any of his rights. On perusal of the original nomination register and duplicate nomination

register, I am of the view that omission is evident may be intentional on the part of the petitioners by not writing the name of respondent no. 2, however, it does not constitute offence of forgery for want of ingredients of cheating. The process also is issued for the offences under other sections, i.e., 468, 474, 471 and 341 of which ingredients are not made out. The learned Sessions Judge while passing the order ought to have considered the time gap between the year 1995 and of 2002 and also the letters sent by the Society to respondent no. 2 which form part of the charge sheet.

6. The petitioners are prosecuted for cheating punishable under section 420 of Indian Penal Code, forgery of a document for the purpose of cheating under sections 465 and 468, intentionally using the forged document as genuine punishable under sections 471 and 474 of the Indian penal Code and for wrongful restraint under section 341 of Indian Penal Code. The petitioners are also prosecuted for the offence of tampering or hiding the documents of the Society punishable under section 146(p) of the Maharashtra Cooperative Societies Act, 1960.

7. Considering the charges levelled against the petitioners/accused and the facts and charge sheet before the Court, though it is accepted that the original nomination register was deliberately suppressed and was not

made available for inspection to respondent no. 2/original complainant, one needs to examine whether the offence are *prima facie* made out or not. The accused did not substitute the name of any other person in place of respondent no. 2 in the nomination register and, therefore, it cannot be said that they intended to transfer the property in the name of other person than respondent no. 2. It is pleaded by the petitioners that the original nomination register was not found and, therefore, they prepared duplicate register. Even this contention is rejected and it is held *prima facie* that they tried to suppress the fact of his nomination by creating a duplicate register with omission of his nomination, this make out an offence under section 146(p) of the Maharashtra Cooperative Societies Act. This act of the petitioners is undoubtedly nasty leading harassment to respondent no. 2. It definitely has caused harm to the mind of respondent no. 2 and he was required to take steps to approach Deputy Registrar Cooperative Societies and also the police. However, in the month of May, two months after the visit of Deputy Registrar , the original nomination register was found and produced by the petitioners. The letters which are relied by the learned counsel for the petitioners disclose that the said fact was communicated by them to respondent no. 2. The petitioners have requested respondent no. 2 to fill up the form of membership. Thus, there is no actual tangible harm or loss to respondent no. 2 due to the subsequent production of the original register. It is not the case that they

scored off the entry of nomination in the original register and they have used the said document or duplicate register to transfer the flat in the name of other persons than respondent no. 2. The learned counsel for the petitioners has argued that in the absence of original register, the petitioners were not sure about the nomination of Late Rameshwari Tyagi, as respondent no. 2 is not the only son of Rameshwari Tyagi but has siblings, therefore, they were not clear about his sole nomination.

8. At the time of hearing of this matter, the amicus curiae Ms. Amita Kuttikrishnan on instructions of respondent no. 2, pointed out the letter dated 14th April, 2002 sent by petitioner no. 1 on behalf of the Society to respondent no. 2. On perusal of the letter, it appears that the contents in the said letter are harsh and irrelevant and the statements made therein were not warranted. It appears that respondent no. 2 is deeply hurt because of the language in this letter. Such letter should not have been written by any office bearer of the Society to any member. It was definitely offensive. At this stage, the learned counsel Mr. Mundargi for the petitioners submitted that the petitioners are ready to tender written apology to respondent no. 2 for this letter and whatever difficulties faced by him. However, respondent no. 2 refused to accept the apology.

9. As there is a change in the contents of two registers, the offence

under section 146(p) of Maharashtra Cooperative Societies Act, 1960 is made out. However, the prosecution cannot stand for want of requisite sanction under section 148(3) of the Maharashtra Cooperative Societies Act.

10. Writ Petition is allowed. Rule is made absolute in terms of prayer clause (c).

(MRIDULA BHATKAR, J.)