

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4392 OF 2004

Mr. Pramod Bhikaji Padte & Ors.	...	Applicants
Vs.		
Smt. Archana A. Mahajan & Anr.	...	Respondents

Mr. Chetan Akerkar, Adv. for the applicants.
Mrs. Veera Shinde, APP for the State.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 23rd February, 2016.

P.C. :

1. This is an application filed under Section 482 of the Cr.P.C. challenging the order dated 6th March, 2002 in C.C. No.164/S/2002 passed by the learned Addl. Chief Metropolitan Magistrate, 24th Court Borivali, Mumbai issuing process against aforesaid applicant for offence 420 and 120-B of the IPC and Section 146(P) of Maharashtra Co-operative Societies Act, (MCS) 1950.

2. Mr. Akerkar, the learned counsel for the applicants has submitted that the complaint does not disclose essential ingredients of Section 420 of IPC or 146(P) of the MCS Act. He has further submitted that the learned Magistrate could not have taken cognizance of the offence under Section 146(P) in the absence of

previous sanction of the Registrar. He has further submitted that the dispute is essentially of civil nature. The civil suit being Suit No.1880 of 2004 in respect of the same property between the same parties, which was earlier filed before this Court, is presently pending before City Civil Court. He has therefore submitted that this is a fit case to exercise jurisdiction under Section 482 of the Cr.P.C. and quash the impugned order dated 6th March, 2002.

3. None present for the respondents though duly served. I have perused the records and considered the submissions advanced by the learned counsel for the applicant. The records reveal that the respondent No.1 Archana Mahajan is the sister of the applicant No.1. The father of the applicant No.1 and the respondent No.1 had purchased a flat in the society Jai Kirti CHS Ltd., Malad (W). The respondent No.1 had lodged a complaint before Addl. Chief Metropolitan Magistrate, 24th Court, Borivali, wherein claimed that she along with her two sisters and her mother had also contributed towards purchase of the said flat. After the death of her father, the said flat was proposed to be transferred in the name of their mother Sumitra Padte. Though the said transfer was not effected in the name of Sumitra Padte, the society had issued the maintenance bills in the

name of Sumitra Padte. Said Sumitra Padte expired on 24th May, 1989.

4. The respondent No.1 claims that she and her sister had taken care of their mother and that the applicant No.1 and his wife had not attended to her. She has further stated that as per the last wish of her father said flat was to be partitioned amongst all four children. She therefore claimed that she has 1/4th share in the said flat.

5. The respondent No.1 had alleged that her sisters had kept objection on record of the society for transfer of the said flat in the name of the applicant No.1 and that the society had decided to submit the matter to the Deputy Registrar for the decision. The respondent No.1 had further alleged that though the majority of the members of the applicant were against the transfer of the said flat in the name of the applicant No.1, the applicant Nos.2 and 3 and the non applicant No.5 conspired together and without their consent transferred the share certificate in respect of the said flat in the names of the applicant No.1 and his wife. The respondent No.1 claimed that she apprehends or suspects that the respondent Nos.2 and 3 and the

non applicant No.5 had received certain amount for illegal transfer of the said share certificates. The respondent No.1 further alleged that certain documents were forged in order to effectuate the transfer of the share certificate. The respondent No.1 therefore claim that applicants have committed offence punishable under Section 406, 409, 420, 467, 468 & 471 r/w. 120-B of the Indian Penal Code and also offence under Section 146(P) of the MCS Act.

6. The learned Addl. Chief Metropolitan Magistrate, 24th Court Borivali, Mumbai vide order dated 14th May, 1997 passed under Section 156(3) of Cr.P.C. for investigating said crime. The police submitted the report stating that no offence was made out. The learned Magistrate did not accept the report and upon considering the averments made in the complaint as well as the statement under Section 200 of Cr.P.C., the learned Magistrate issued process under Section 420 and 120-B of the IPC and Section 146(P) of the MCS Act, 1950.

7. The averments made in the complaint clearly indicate that the dispute is in respect of the said flat which was admittedly purchased by the father of the respondent No.1 – complainant and the applicant No.1 herein. The parents of the complainant and the

respondent No.1 have expired and the applicant No.1, respondent No.1 and the other sisters are claiming right in respect of the said flat. It is not in dispute that Rekha Pitale the sister of the complainant and the applicant herein had filed a suit No.1880 of 2004 before this Court for partitioning of the said flat. The said dispute is still pending adjudication. The dispute raised in the said complaint is therefore essentially of civil nature and does not disclose the essential ingredients of cheating.

8. It is also to be noted that the applicant Nos.2, 3 and 5 are the members of the co-operative society. They have been dragged into said litigation on the specific allegations that they have forged certain document, without specifying the documents which are allegedly forged. Needless to state that no process can be issued on mere suspicion. The statement under Section 200 as well as complaint do not reveal that the applicant herein had received or had effected said transfer for consideration. In the absence of such material, no process could have been issued on such wild allegations.

9. The learned counsel for the applicant has submitted that the prosecution under Section 146(P) of MCS Act could not have been

lodged in the absence of previous sanction of Registrar. The averments in the complaint as well as statement under Section 200 of Cr.P.C. does not indicate that such previous sanction was obtained and hence process under Section 146(P) also could not have been issued.

10. For the reasons stated above the application is allowed. The impugned order dated 6th March, 2002 is hereby quashed and set aside.

(ANUJA PRABHUDESSAI, J.)