

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1154 OF 2015

Rameshchandra Babulal Shah & Ors. Applicants

versus

The State of Maharashtra & Ors. ... Respondents

Mr.Atul S. Tungare, Advocate a/w Mr.Kuldeep Singh, Advocate
a/w Mr.K.N. Marathe, Advocate for the Applicant.
Mrs.Anamkika Malhotra, APP for the State/Respondent.
Mr.Sathyannarayanan, Advocate for Respondent No.2.
Mr.Kapil Shah, Advocate for Respondent Nos.3, 4 and 5.

CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 05th DECEMBER, 2016.

P.C. :

1. This applicant is directed against the order dated 06/05/2014 passed by the learned Metropolitan Magistrate, 26th Court, Borivali, in Criminal Case No.06/SW/2014, wherein learned Magistrate has issued process against applicants/accused for the offences punishable u/s 406 of Indian Penal Code and 13(1) of Maharashtra Ownership Flats Act (for short "MOFA"). The applicants/accused Nos.1 to 12 are the office bearers of one Lotus Co-operative Housing Society, at Borivali. Respondent No.2 is the son of flat owner in the said cooperative housing society.

Respondent No.4 is Smt. Shantidevi Lalchand Chhaganlal Foundation Trust and respondent No.3, 4 and 5 are the Trustees of Smt. Shantidevi Lalchand Chhaganlal Foundation Trust. Thus, respondent Nos.3, 4 and 5 are the accused Nos.13, 14 and 15 in the private complaint filed by the respondent No.2. It is the case of original complainant that original accused Nos.13, 14 and 15 are the owners of land where the building of the society stands. The office bearers of the said society have decided to redevelop the said property having connivance with original accused Nos.13, 14 and 15 i.e. present respondent Nos.3, 4 and 5. The complainant being aggrieved by the said decision and malpractice, which has taken place in the administration of the said society including defalcation of the society money has filed private complaint before the Court of the learned Magistrate.

2. The learned counsel for the applicants submitted that these applicants, who are the original accused Nos.1 to 12 were not office bearers when the decision of redevelopment was taken. He further submitted that no agreement of redevelopment is entered into till today by the committee members with any builder.

It is submitted by learned counsel for the accused Nos.3, 4 and 5 that they own the land on which the building of the society stands. They are not the promoters or the builders. They have entrusted the work of development to one Ansal Builders and Developers. He further submitted that no one from respondent Nos.3, 4 and 5 is the partner or Director of Ansal Builders. The learned counsel for the applicants submits that no offence u/s 406 or u/s 13(1) of MOFA is made out.

3. The learned counsel for the respondent No.2 has argued vehemently and relied on the contents of original complaint and submitted that office bearers of the society i.e. respondent Nos.1 to 12 have done a lot of misdeeds and have flouted the rules and regulations under Maharashtra Co-Operative Society Act. He further submitted that the property of the society i.e. the land and building of the society is entrusted with the office bearers of the committee of the society, i.e. present applicants. While elaborating the definition of property, learned counsel relied on ratio laid down by the Honourable Supreme Court in the case of R.K. Dalmia, versus, Delhi Administration, reported in 1962

AIR 1821. He submitted that the definition of property is much wide and not restricted to the movable property.

4. The Ratio laid down in R.K.Dalmia's case (cited supra) in respect of meaning of property in respect of section 405 of IPC is binding, however, I am of the view that in view of the facts it is not helpful to the respondent No.2.

5. He further relied on the order dated 25/07/2014 passed by the Divisional Joint Registrar, Co-op. Societies, Mumbai Division, Mumbai, wherein the Divisional Joint Registrar has mentioned that committee members of the society have violated the guidelines of the Government circular dated 03/01/2009, which is a serious issue and that the Government directives are obligatory upon the society. Learned counsel argued that there is a violation and it is further pointed out by him that the applicants have not given satisfactory explanation to the 23 charges framed by the Deputy Registrar of Co-operative Society, against the Managing Committee i.e. the present applicants. The learned counsel further relied on the report of structural audit of the building and submitted that the redevelopment is not required.

The decision of redevelopment of the property is collusive which amounts to criminal breach of Trust of members and also the offence punishable u/s 13(1) of MOFA has made out against these applicants and respondent Nos.3, 4 and 5. He further relied on agreement dated 15/06/1988 between respondent Nos.3, 4, 5 and the society.

6. Perused the complaint, so also the material documents which are referred to by the counsel of both the sides. It appears that the decision of redevelopment as per the contention raised by the original complainant is taken by the committee though redevelopment is not necessary in view of the structural audit. However, no agreement has taken place between the office bearers of the housing committee and in builder. It appears that the present complainant is in minority and he is opposing the proposal of redevelopment. The Deputy Registrar has framed 23 charges against the present office bearers. Present applicants being the office bearers and that appeal filed by them bearing No.54/14 challenging the framing of charges is dismissed by the Divisional Joint Registrar. However, that is the proceeding before the cooperative Court under the Maharashtra Co-Operative Society Act.

7. In the present criminal case process is issued u/s 406 of IPC and 13(1) of MOFA. Considering the allegations made in the contents i.e. the offence of entrustment of any property or having dominion over property which is dishonestly used or disposed of or it is dishonestly converted into the own use by the applicants or respondent Nos.3, 4 and 5, is not seen. I am of the view that the ingredients criminal breach of trust are not made out to issue process u/s 406 of IPC. Similarly, section 13(1) of MOFA states about the offences committed by promoter who is contravening provision of section 3, 4, 5, 10 or 11. Considering role attributed to respondent No.3, 4 and 5 and the status of involvement of the present applicants, I am of the view that no offence is made out u/s 13(1) of MOFA and hence the learned Magistrate has committed error in law to issue process u/s 406 of IPC and 13(1) Maharashtra Co-Operative Society Act. Hence, the application is allowed in terms of prayer clause (a).

8. The application stands disposed of accordingly.

(MRIDULA BHATKAR, J.)