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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
WRIT PETITION NO.3678 OF 2011

Ameya Developers ...Petitioner
vs.
The State of Maharashtra
and others ...Respondents

Mr.R.B.Paranjape a/w Mr.Amey Deshpande i/b
M.M.Vaidya for the Petitioner
Ms M.H.Mhatre, APP for the respondent No.1
Mr.P.R.Kadam for respondent Nos.4 to 8.

CORAM : A.S.OKA, &
A.A.SAYED, JJ.
DATE : SEPTEMBER 30, 2016

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 This petition was called out for final hearing yesterday, when we have heard the learned counsel for the petitioners (accused Nos1,3 and 4), the learned APP for the respondent Nos.1 and 2 and the learned counsel for the respondent Nos.4 to 8. As none appeared for the respondent No.3 who is the first informant, the petition was adjourned till today. Even today, none appears for the respondent No.3.

2 The prayer in this petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure,1973 (for short Cr.P.C.) is for quashing the proceedings of the criminal case for the offences punishable under sections 420, 465, 467, 468, 471 read with section

120-B of the Indian Penal Code.

3 The respondent No.3 filed a complaint in the Court of the learned Metropolitan Magistrate, 34th Court at Vikhroli against the present petitioners and others seeking action under sub-section 3 of section 156 of the Cr.P.C. The learned Metropolitan Magistrate by an order dated 4th June 2009 directed the investigation in accordance with sub-section 3 of section 156 of the Cr.P.C.

4 Briefly stated, the case made out by the respondent No.3 in the complaint is that the petitioner No.1 was appointed as a Developer by the proposed co-operative society of slum dwellers for a slum rehabilitation scheme. The case made out by the respondent No.3 in the complaint is that she was in possession of room nos.9 and 10 in the property subject matter of redevelopment. She claimed that the room no.9 was in the name of her younger son Manoj. It is alleged that the respondent No.3 along with her daughter-in-law, husband and grand children as well her nephew Shri Hiradas occupied the room Nos.9 and 10. Room No.10 was later on transferred by the said Hiradas in the name of the complainant. It is alleged that there were 63 occupants of the property. There is a reference in the complaint to the Annexure-II prepared by the competent Authority. It is alleged that the Annexure-II shows that there are 75 structures which are in possession of the tenants/occupants. The allegation is that though there were actually 63 tenements, 12 additional

tenements were falsely incorporated in the Annexure-II. The second allegation in the complaint is that a premises in lieu of Room No.10 was denied to the complainant. The allegation is that the respondent No.3 approached the accused Nos.1,2,3,4 and 20 and 21 for deleting the name of the 12 persons from the Annexure-II. Further allegation is that the respondent No.3 was called upon by the accused Nos.2 to 5 to pay them a sum of Rs.5,00,000/-. This payment was made for the room No.10.

5 The allegation is that though the said amount was paid by the respondent No.3 to the accused No.1, a receipt was not issued. Reliance is placed on the complaint dated 1st November 2008 submitted by the respondent No.3 to the concerned Authorities making the grievances which are made in the complaint.

6 The learned counsel for the petitioner invited our attention to the order dated 20th January 2009 passed by the First Court in Writ Petition (L) No.2837 of 2008 filed by the respondent No.3/complainant. His submission is that same grievances have been made in the said writ petition. By order dated 28th January 2009, the said Writ Petition was disposed of as the respondent No.3 had adopted a remedy before the High Power Committee. He also invited our attention to the orders passed by the Additional Collector, the possession receipts etc. His submission is that the complaint filed by the respondent No.3 is completely malafide. In any case, there are no assertions in the complaint

regarding compliance with sub-section 1 of section 154 of the Cr.P.C. His submission is that not only the complaint is malafide, but no offence is made out on plain reading of the said complaint. The learned APP supported the impugned FIR and opposed the petition.

7 We have given careful consideration to the submission. Exhibit-B is the order dated 21st June 2009 passed by the Additional Collector, Mumbai Suburban District. The said order deals with the issue of eligibility raised by the respondent No.3. The said order records that on 17th February 2009 the respondent No.3 and her son were present. The contention of the respondent No.3 was that apart from room No.9, there was a room No.10 which was a separate room. The order records that it was pointed out that in respect of room No.9, her son Manoj was held eligible for allotment of a tenement in the redeveloped building. The grievance of the respondent No.3 noted in the order is that her name ought to have been included in the Annexure-II as the person eligible in respect of the room No.10. In the said order, the said grievance of the respondent No.3 has been considered after considering all the documents produced by her. For the reasons recorded in the said order, the grievance of the respondent No.3 regarding room No.10 was rejected by the Deputy Collector. It is pointed out in the petition that a transit accommodation has been already allotted to the respondent No.3's son Manoj. It is pointed out

that Original Side Writ Petition (L) No.2224 of 2009 was filed for challenging the said order which was withdrawn with liberty to approach High Power Committee. The letters of allotment issued to eligible persons have been annexed to the petition.

8 One of the main grievances made in the complaint is that the respondent No.3 has not been held as eligible by including her name in Annexure-II in respect of the room No.10. The complaint was filed before the learned Metropolitan Magistrate on 1st December 2009. The Deputy Collector passed an order dated 21st July 2009 by which the said claim of the respondent No.3 in respect of the room No.10 was negatived and the said order has become final. While making a grievance in regard to room No.10, there are allegations made that non existing 12 tenements were shown in Annexure-II. If the respondent No.3 has any grievance against the Annexure-II, a remedy is always available. The complaint seems to have been filed as the respondent No.3 was held as ineligible in respect of the room No.10. The dispute as regards room No.10 is a pure civil dispute which in the facts of the case has been already decided by the Competent Authority. Therefore, it can be said the complaint filed by the respondent No.3 is malafide.

9 Moreover, we find that the learned Metropolitan Magistrate has ignored that there is a complete absence of averments in the complaint regarding compliance with sub-sections 1 and 3 of section 154

of the Cr.P.C before filing the complaint.

10 Hence, this is a fit case to exercise power under section 482 of the Cr.P.C as filing of the criminal proceedings by the respondent No.2 is nothing but gross abuse of process of law.

11 Hence, the petition must succeed and we pass the following order:

(I) Rule is made absolute in terms of prayer clause (a) which reads thus:

"(a) That the Hon'ble Court may be pleased to call for record and proceedings of case Nos.3/SW/09 filed under section 420, 465, 467, 468, 471 r/w 120B of the Indian Penal Code pending in the court of 34th Metropolitan Magistrate, Vikhroli and after examining its legality, propriety and the validity, this Hon'ble Court may be pleased to quash and set aside the same along with the FIR No.200 of 2009 registered by the Nehru Nagar Police Station in pursuance to the direction issued by the learned Metropolitan Magistrate."

(II) Parties to act upon an authenticated copy of this order.

(A.A.SAYED,J.)

(A.S.OKA,J.)