

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5091 OF 2014

Pradeep Dave]
Aged : 72 Years,]
Managing Director of M/s. Aimco]
Pesticides Ltd.,]
R/at Flat No.3, Vibhuti Apartment,]
Ruia Park, Juhu, Mumbai 400 049.] Petitioner

Versus

1. Narendra Harilal Parekh]
Age : 62 Years, Occu. Business,]
Vibhuti Investment Co. Ltd.,]
Vibhuti Apartment, 4th Floor,]
Plot No.359, Shanti Road,]
Off. Ghandhi Gram Road,] Respondent No.1/
Ruia Park, Juhu, Mumbai 400 049.] [Org. Complainant]
]]
2. State of Maharashtra] Respondent No.2

Mr. Amrut Joshi a/w. Shavez Mukri, i/by
M/s. India Law, for the Petitioner.

Mr. R.S. Lodhi for Respondent No.1.

Mrs. A.S. Pai, A.P.P., for Respondent No.2-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 26TH FEBRUARY 2016.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith, by consent. Heard learned counsel for the parties.

2. By this Writ Petition, the Petitioner is challenging the order dated 9th April 2014 passed by the Metropolitan Magistrate, 10th Court at Andheri, Mumbai, in C.C. No.73/SW/2014, thereby issuing process against the Petitioner for the offence punishable under Section 471 of IPC.

3. Facts of the Petition can be stated, in brief, as follows :-

Respondent No.1 herein has filed private criminal case before the Trial Court alleging, inter alia, that he is the constituted attorney to the Builder and Developer M/s. Vibhuti Investments Company Ltd., which was entrusted to construct Vibhuti Apartment Building and after construction of the building, he has sold the flats to the flat purchasers. Respondent No.1 further alleged that the flat purchasers have filed registration proposal before the Registrar of Co-operative Societies and the said proposal was rejected twice on various grounds on 10th March 2006 and 6th June 2006, respectively. Respondent No.1 has thereafter executed Condominium on 2nd September 2006 in respect of the flat and car-parking for Vibhuti Apartment. Thereafter also, the registration proposal for Co-operative Society was refused by the Deputy Registrar by letter dated 13th August 2007 informing that Vibhuti Condominium had already been registered. The flat purchasers thereafter filed complaint before the Consumer Forum seeking relief. The said complaint was also came to be rejected by Consumer Forum on 11th December 2009.

4. In short, the grievance of Respondent No.1 before the Trial Court is that, the building is yet not registered under the Maharashtra Co-operative Societies Act, 1960. Despite that, the Petitioner herein is stating in his application that, it was registered as Co-operative Society on the basis of some documents, which Respondent No.1 has not signed. Hence, Respondent No.1 made complaint to the Commissioner of Police, Economic Offences Wing, Crawford Market, Mumbai and also to the Juhu Police Station, Mumbai, to take appropriate action against the Petitioner. However, Police had not taken any action and hence he approached the Trial Court for issuance of process against the Petitioner for various offences punishable under Sections 465, 467, 468, 471 and 420 of IPC.

5. On his complaint, the Trial Court was pleased to hold that, perusal of the complaint and documents thereto do not make out the commission of offences punishable under Sections 465, 467, 468 and 420 of IPC. The Trial Court has, therefore, issued process against the Petitioner for the offence punishable under Section 471 of IPC only.

6. While challenging this order of the Trial Court, learned counsel for the Petitioner submits that, in the complaint, Respondent No.1 has not disclosed the material facts and I find that there is much substance in this grievance. It is pertinent to note that, in Para No.10 of the complaint filed before the Trial Court, Respondent No.1 has stated that he had given

written complaint to Juhu Police Station and the Commissioner of Police, Economic Offences Wing at Crawford Market. However, Police has not taken any action. However, the letter which is filed in this Writ Petition, at Page No.114, reveals that Police had informed Respondent No.1 that after obtaining opinion and the Report of the Law Officer, it was found that the grievance raised in the complaint is of civil nature and hence Respondent No.1 should initiate appropriate proceedings before the concerned Court. Now this letter of the Senior Police Inspector, Juhu Police Station is dated 12th December 2013, whereas the complaint is filed before the Trial Court on 14th February 2014 i.e. much after the letter was received informing him that dispute in the case is of civil nature. It is pertinent to note that this fact is, however, not mentioned in the complaint and a bald statement is made that Police has not taken any action against the Petitioner.

7. Apart from that, in order to make out any offence of forgery, certain basic ingredients are required to be made out. Section 471 of IPC contemplates that, whoever fraudulently or dishonestly uses as genuine any document or electronic record, which he knows or has reason to believe to be a forged document or electronic record, shall be punished for the offence of forgery. What is forgery is also laid down. Here in the case, Respondent No.1 has not spelt out specifically which is the forged document the Petitioner is using as genuine one. The entire complaint is

conspicuously silent about the same. When the Petitioner is charged with a specific offence of using the forged document as genuine one under Section 471 of IPC, then it was very much incumbent on Respondent No.1 to spell out in the complaint itself as to which is the document which is being used by the Petitioner as forged document. He is relying simpliciter on certain observations made by the Registrar of Co-operative Societies to the effect that, as the Developer and Promoter of the proposed Society are one and same, someone else appears to have made signature as authorized signatory on the proposal given for registration of the Society. However, it is too vague an averment, without even stating that any forgery as such is committed either by the Petitioner or someone else. In such situation and on bare perusal of the complaint, the essential ingredients of the offence are not at all made out.

8. Needless to say that, allowing such process to continue is clearly an abuse of the Court. Moreover, when the Police Report clearly signify that the dispute is of a civil nature and the said Report was not brought to the notice of the learned Magistrate, then also it follows that allowing such civil dispute to be converted to criminal offence is again a sheer abuse of the process of law. Such practice is deprecated by the Supreme Court in various of its Judgments, one of which is relied upon by learned counsel for the Petitioner that of ***Chandran Ratnaswami Vs. K.C. Palanisamy***

and Ors., AIR 2013 SC 1952, wherein, after taking note of its earlier decision, the Supreme Court has held that, *any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged*. It was also held that, *a court proceeding ought not to be permitted to degenerate into a weapon of harassment or prosecution*.

9. In the instant case, on both these counts, the process issued against the Petitioner for the offence under Section 471 of IPC needs to be quashed and hence the Writ Petition is allowed. The impugned order of the Trial Court issuing process against the Petitioner for the offence under Section 471 of IPC, is quashed and set aside.

10. Bail Bonds, if any, executed by the Petitioner stand cancelled.

11. Rule is made absolute.

[DR. SHALINI PHANSALKAR-JOSHI, J.]