

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1112 OF 2003

Lahu Shivram Gaikwad

....Petitioner

Vs.

Shivaji Shankar Shinde and Ors

... Respondents

Mr. Ravindra V. Sankpal Advocate for Petitioner

None for respondents

Ms. Neeta Jain APP for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATED : 20th APRIL, 2017.

JUDGMENT:

1) Heard.

2) Petitioner herein is an accused in Criminal Case No. 319 of 2000 pending before Chief Judicial Magistrate, Solapur and is being prosecuted for offence punishable under section 420 r/w 34 of the Indian Penal Code alleging therein that one Narayan Shyinde was chairman of Rajyasarathi Sahakari Griha Nirman Sanstha. That the complainant was acquainted with him. That the complainant had paid Rs. 11,000/- to the society soliciting

membership of the society. He had also paid Rs. 260/- towards share price and Rs. 20,000/- to present respondent nos. 3 & 4 who were builders. Complainant was given assurance that he would give plot constructed up to plinth level admeasuring 1250 sq. meters. He had subsequently realized that he had been cheated by the present petitioner and respondent nos. 2, 3, 4 & 5 and hence, had filed complaint before Chief Judicial Magistrate, Solapur.

3) The learned Magistrate had recorded verification of the complainant and had, after subjective satisfaction, arrived at a conclusion that the complainant has made out *prima facie* case and that there are sufficient grounds to proceed against the accused for offence punishable under section 420 r/w section 34 of the Indian Penal Code and hence, vide order dated 16/12/2002 had issued process against all the accused. The learned Magistrate had then recorded evidence before charge and after perusal of the substantive evidence of the complainant, had arrived at a conclusion that there is sufficient evidence on record to frame the charge against the accused for offence punishable under section 420 r/w 34 of the Indian Penal Code.

4) Being aggrieved by the said order of framing of charge, accused had filed Criminal Revision Application Nos. 2 of 2003, 4 of 2003 and 22 of 2003. Revisional Court, by a common order was pleased to dismiss the Criminal Revision Application No. 4 of 2003 and 22 of 2003, however, Criminal Revision Application No. 2 of 2003 was allowed. The revision was partly allowed by Judgment and Order dated 26/03/2003. Present petition was filed in July 2003 and was circulated for 13/08/2003. This Hon'ble Court by an order dated 13/08/2003 was pleased to issue notice and grant ad-interim stay in terms of prayer clause (d) to the petition and hence, further proceedings were stayed.

5) It is a mater of record that charge was framed on 17/11/2000. Once the charge was framed, there was no occasion for the learned Sessions Judge to discharge any of the accused as framing of charge by itself would mean that trial had commenced. It was necessary to take framing of charge to its logical end.

6) In view of this, petition deserves to be disposed of since the trial has

commenced. This Court cannot quash the charge which is framed. Without going into the merits of the matter, only on the ground that the charge is framed, this Court is inclined to dispose of the petition.

7) The learned Magistrate shall proceed with further stages of the trial. Office to communicate this order to the concerned Court, forthwith. It is made clear that all contentions are kept open.

8) Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)