

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

WRIT PETITION NO. 1476 OF 2002

1. Hema Park Co-op. Hsg. Society
Bldg. No.4, Ground Floor, Hema Park,
Bhandup (E), Bombay-42
2. Mr. G. K. Nair,
Adult, Occupation - Business
1/B/604, Hema Park, Bhandup (E)
3. Mr. S. B. Gaddamwar
Adult, Occupation - Service
Residing at Building No.4
Hema Park Co.Op. Hsg. Soc.
Bhandup (East), Mumbai - 400 042
4. Mr. Chandrashekhar
Adult, Occupation - Service
Residing at Flat No.2A - 503
Hema Park Co-op. Hsg. Soc. Ltd.
Bhandup (East), Mmbai-400 042
5. Mr. J. N. Hirnaik
Adult, Occupation - Service
Residing at Flat No. 2 B - 602
Hema Park Co-op. Hsg. Soc. Ltd.
Bhandup (East), Mmbai-400 042
6. Mr. K. N. Patil
Adult, Occupation - Service
Residing at Flat No. 3 B -
Hema Park Co-op. Hsg. Soc. Ltd.
Bhandup (East), Mmbai-400 042
7. Mr. M. P. Parmar
Adult, Occupation - Service
Residing at Flat No. 702, Bldg. No.4
Hema Park Co-op. Hsg. Soc. Ltd.
Bhandup (East), Mmbai-400 042
8. Mr. Raju Daniel
Adult, Occupation - Service
Residing at Flat No. 1 A - 504
Hema Park Co-op. Hsg. Soc. Ltd.
Bhandup (East), Mmbai-400 042

... Petitioners

vs.

1. The State of Maharashtra
2. C. Antony Louis
Adult, Residing at Flat No. 103,
Building No.2, 'A' Wing,
Hema Park Co-op. Hsg. Soc. Ltd.
Bhandup (East), Mumbai - 400 042 ... Respondents

Mr. N. V. Sawant, Advocate for the petitioners.

Ms. Pallavi Dabholkar, A.P.P. for the State/respondent no.1.

Respondent no.2 absent.

Coram : Smt. R. P. SondurBaldota, J.

Date : 27th February, 2017

JUDGMENT :

1. The petition has been appearing on the board for hearing for several weeks. After the submissions on the petition by Mr. Savant were heard, it was adjourned to enable respondent no.2 to appear and advance his arguments. He has however failed to appear before the Court. Petitioners no.2 to 8 and respondent no.2 are members of petitioner no.1 Society Hema Park Co-op. Housing Society Ltd. At the relevant time, petitioner no.2 was the Chairman and petitioner no.3 was the Secretary of the Society. Petitioners no. 4 to 8 were the members of the Managing Committee. On 13th September, 2002 respondent no.2 filed a private complaint in the Court of 27th Metropolitan Magistrate, Mulund being CC No.429/S/2002 alleging offence punishable under Section 427 r/w 34 of Indian Penal Code (I.P.C.). By the order dated 25th September, 2002 the Trial Court took cognizance of the complaint and issued process against the petitioners under Section 427 r/w 34 of I.P.C. By the present petition the petitioners seek to not only quash the

proceedings against them but also claim compensation in the sum of Rs.50,000/- to each of the petitioners.

2. The brief statement of the facts alleged in the complaint is that respondent no.2 is occupant of flat no.2/A/103 situate on the first floor of the building of the society. His flat consists of three rooms with each room having a balcony. Respondent no.2 had kept potted plants and also installed a wash basin in the balcony. He alleges that on 12th February, 2002 when he returned from his annual holiday he found that all the balconies were covered with cement dust. The plastic pots of the plants were damaged. The plants had died and there were cracks in the wash basin. According to the complainant this damage caused to his property is on account of negligence on the part of the petitioners in protecting the property of the members when maintenance work to the building was being carried out. The damage to his property was allegedly caused when petitioner no.1 was carrying out pre-monsoon maintenance work to the terrace of the building. As per the complaint, the total damage caused to respondent no.2 was of the value of Rs.2,000/-. He had by his letter dated 17th June, 2002 brought the damage to the notice of the petitioners but they failed to take any action thereon.

3. Mr. Savant, the learned advocate for the petitioners submits that the complaint filed by respondent no.2 is a mischievous complaint and is filed by way of retaliation to the proceedings initiated by the petitioners for recovery of the arrears of monthly maintenance charges payable by respondent no.2 since March, 2000. Petitioner no.3 being the Secretary of the society has filed recovery proceedings under Section 101 of Co-operative Societies Act before the Registrar of Co-operative

Societies 'S' Divison, Konkan Bhavan, Navi Mumbai. In the said proceedings notice has been issued to respondent no.2 and despite receipt of notice he has failed to appear in the proceedings. Consequently the Registrar by his order dated 19th July, 2002 has directed respondent no.2 to pay the arrears to the extent of Rs.30,329/- of monthly maintenance to petitioner no.1. The petitioners contend that ever since the time, respondent no.2 has filed as many as eight criminal complaints against the petitioners.

4. Perusal of the complaint filed by respondent no.2 shows that it merely describes the damage caused to plants, pots and the wash basins. There is nothing therein to indicate that the petitioners are responsible for that damage. Besides one of the main ingredients of the offence of Mischief is the intention to cause wrongful loss or damage to a person or to the property or knowledge that he is likely to cause wrongful loss or damage to a person or the property. This material ingredient is conspicuously missing from the complaint. Hence the application is allowed in terms of prayer clause (a).

[Smt. R. P. SondurBaldota, J.]