

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1561 OF 2002

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| 1. | Shri Harish Kulkarni |) |
| 2. | Shri Harakchand Gasar |) |
| 3. | Shri Rajanibhai Mehta |) |
| 4. | Shri Ramesh Doshi |) |
| 5. | Shri Shirish Chiniwala |) |
| 6. | Shri P.T. Vyas |) |
| 7. | Shri K.D.Chiniwala |) |
| 8. | Shri B.M.Shah |) |
| | All residing at Vellard View Society, |) |
| | Haji Ali Circle, 14 Tardeo Road, |) |
| | Mumbai 400 034. |) |
| 9. | Shri Prakash H. Shah and Company |) |
| | 315 C.S.M.Building, First Floor, |) |
| | Behind Hinduja College, New |) |
| | Charni Road, Mumbai 400 004. |).. Petitioners. |
| | | (Orig. Accused) |

Vs.

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| 1. | The State of Maharashtra |) |
| 2. | Shri Atul M. Parekh, |) |
| 3. | Shri Mahesh N. Shah |) |
| 4. | Shri Saurabh B. Dani |) |
| 5. | Shri Paresh D. Mehta |) |
| 6. | Shri Jaomin Dani |) |
| 7. | Shri I.Z.Mehta |) |
| 8. | Shri Nitin Shah |) |
| 9. | Mahendra G. Daula |) |
| 10. | Shri Pradeep Chandrakant |) |
| 11. | Shri Sunil J. Doshi |) |
| 12. | Shri Deepak N. Nicham |) |
| 13. | Shri Premal S. Chokshi |) |
| 14. | Shri Paresh R. Shah |) |
| 15. | Shri Deepak D. Mehta |) |
| 16. | Shri Ajit P. Kapadia, |) |

17. Shri Girish K. Kapadia)
18. Shri Shailesh K. Shah)
19. Smt. Charu A. Parekh)
20. Shri Himanshu Dani)
21. Smt. Sulochana Khandwala)
22. Smt. Payal Gupte)
All Nos. 2 to 22 all residing at)
Vellard View, Haji Ali Circle,)
14 Tardeo Road, Mumbai 400 034.)..Respondents
(Orig. Complts)

None for the petitioners.

None for the respondents.

Mr.S.R.Agarkar,APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 6th April, 2017.

ORAL JUDGMENT :

None present for the petitioners. None present for the respondents. The petition is very old. In these circumstances, the Court has requested the learned counsel Mr. Yashpal Thakur to espouse the cause of the respondents. The learned counsel has seen the papers and made legal submissions.

2. At the time of admission, stay was granted in respect of the order passed by the Sessions Judge only. The operative order passed by the Sessions Court is as follows :-

“Revision application is allowed.

*The order dated 24-6-2002 passed by the
Trial Court is set aside.*

The complaint is restored to file.

The complaint is referred to Tardeo Police

*Station for investigation under section
156(3) of the Criminal Procedure Code.”*

The order passed by the learned Sessions Judge is dated 30.9.2002. It appears from the records that respondent Nos. 2 to 22 had filed a complaint against the petitioners before the Addl. Chief Metropolitan Magistrate, 40th Court, Girgaon, Mumbai on 7.6.2002 alleging therein that the petitioners and the respondents are members of Vellard View Society, situated at Haji Ali Circle, Mumbai. The allegation against the petitioners was that they had siphoned huge amount of the said Society which was paid by the members for the purpose of repairs and other items. It is alleged that they had misappropriated the said amount and hence have committed offences punishable under Sections 406, 420, 467, 468 read with Section 34 of the Indian Penal Code. It also appears from the record that the respondent Nos. 2 to 22 have filed complaint before the Tardeo Police Station on 21.5.2002 and the police had not taken any cognizance.

3. The prayer in the complaint was to give direction under Section 156(3) of Cr.P.C. The Addl. Chief Metropolitan Magistrate had applied his mind to the complaint and the allegations levelled against the petitioners. The learned Magistrate had rightly observed as follows :-

“The dispute inter-se of the members is to

be resolved only by the Registrar, District Cooperative Societies under the Co-operative Societies Act. The application and complaints which are presented to the District Deputy Registrar shows no action taken against these accused persons, therefore, it would be unjustifiable to give the weapon in the hand of the complainant to charge them for investigation under section 156(3) of the Criminal Procedure Code.

4. It was observed by the learned Magistrate as follows :-

“It pertains to the accounts and that can be the question of civil nature also. In such disputed society it is needless to say being well settled position that even Administrator can be also appointed by Registrar, Cooperative Societies under Act.”

According to the learned magistrate, the complainant had not taken recourse to the other remedies under the Co-operative Societies Act.

5. The complainant, being aggrieved by the said order, had approached the Sessions Court by filing Revision Application No.483 of 2002. The learned Sessions Court was of the opinion that the Magistrate need not take into consideration that the dispute can be resolved before the District Deputy Registrar of Co-operative Societies and, therefore, the learned Sessions Judge had allowed the Revision and directed investigation

under Section 156(3) of Cr.P.C.

6. In fact, the learned Sessions Judge could have remanded the matter for reconsideration to the learned Magistrate and ought not to have issued direction under Section 156(3) of Cr.P.C. The direction under Section 156(3) of Cr.P.C. can be given only by the Magistrate. Section 156(3) of Cr.P.C. reads as follows :-

“156(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.”

7. What ought to have been considered by the learned Sessions Judge under Section 397 of Cr.P.C. was as to whether the order passed by the learned Magistrate was correct and legal.

8. The Hon'ble Apex Court in the case of **Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460** has held that the revisional Court is empowered to call for and examine the records of an inferior court for the purpose of satisfying itself as to the legality and regularity of any proceedings or order made in this case. Object of this provision is to set right a patent defect or an error of jurisdiction or law.

9. Section 398 of Cr.P.C. reads as follows :-

“398. Power to order inquiry -

On examining any record under section 397 or otherwise, the high Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (4) of section 204 or into the case of any person accused of an offence who has been discharged :

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.”

10. It is well settled that the only order that can be made by the revisional Court is under Section 398 i.e. for further enquiry. It is in view of this that the Petition deserves to be allowed.

11. It would be futile to remand the matter to the Court of the Metropolitan Magistrate for further enquiry. At this stage i.e. after 15 years, the Court cannot be oblivious of the fact that the dispute was pertaining to a Co-operative Society which is governed

by the rules and regulations under the Maharashtra Co-operative Societies Act. That in the past 17 years, there must have been a change in the management of the Society.

12. It is in these circumstances that the Petition is allowed. The order passed by the learned Sessions Judge dated 30.9.2002 is quashed and set aside. Rule made absolute in the above terms. Petition stands disposed of.

(SMT. SADHANA S.JADHAV, J.)