

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 363 OF 2018**

Harshawardhan Shrikrishna Dole	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. S. S. Butala i/b S. S. Butala & Associates for the Petitioner

Ms. P. P. Shinde, A.P.P for the Respondent Nos.1 & 2-State

Mr. Sanjeev Kadam a/w Mr. Pankaj and Ms. Yashaswini Chandra i/b
Ms. Sabeena Mahadik for the Respondent No. 3

Mr. Nihar Ghag i/b Mr. V. V. Jain for the Respondent No. 4

Mr. N. R. Bubna for the Respondent No. 5

API Ms. R. C. Ghanvat from Chitalsar Police Station, Thane City, is present

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
MONDAY, 25th JUNE, 2018***

P.C. :

1 The above Writ Petition has been filed for quashing of the FIR being No. I-288 of 2017 registered with the Chitalsar Police Station, Thane City, for the offences punishable under Sections 341 and 283 of the Indian Penal Code against the Petitioner.

2 The Petitioner has a bungalow in the Society known as Raj Vilas Haveli Kothi Cooperative Housing Society Ltd. The Petitioner's bungalow is Bungalow No. 22. It seems that adjoining the Petitioner's bungalow, there was an open plot of land, which, according to the Petitioner, was earmarked for Recreation Ground ('RG'). It seems that the Respondent No. 3 herein is constructing a bungalow upon the said plot of land. It is the allegation of the Respondent No. 3 that the Petitioner is preventing his ingress and egress to the said plot of land by parking his vehicle in a particular manner, which has resulted in Respondent No. 3 registering the instant FIR. There is a dispute as to whether the plot of land on which the Respondent No. 3 is constructing his bungalow, is meant for RG or can be constructed upon, which is sought to be raised in the above Petition. Whereas, it is the case of the Petitioner that the plot is meant for RG, it is the case of the Respondent No. 3 that there is no such reservation on the said plot of land.

3 The learned counsel for the Petitioner seeks to place reliance on the letters of the Society in question indicating the alleged objection to the construction carried out by the Respondent No. 3. The Respondent

No. 3, in turn, relies upon the fact that he has been given membership by the said Society. It is the case of the Petitioner that the instant FIR has been registered to suppress the voice of the Petitioner, who is objecting to the said construction.

4 It is not possible for us to go into the factual aspects as regards the legality or otherwise of the construction of the Respondent No. 3 in the present proceedings. We are also informed that the Petitioner has in fact filed a Civil Suit in the Civil Court at Thane. It is probably in the said Suit that the Petitioner can seek appropriate reliefs.

5 Insofar as the FIR is concerned, we are informed by the learned A.P.P Ms. Shinde that though the Petitioner was requested by the investigating agency to remain present by issuing him a notice under Section 41A, the Petitioner has not remained present for recording of his statement. Upon this, the learned counsel for the Petitioner Mr. Butala disputes the said position. However, he states that the Petitioner would present himself before the Police i.e. API Mrs. R. C. Ghanvat, Chitalsar Police Station, on 30th June 2018 at 3:00 p.m.

6 Having regard to the nature of allegations and considering the fact that it is between persons, who claim to be members of a cooperative housing society, we expect that the investigating agency would take an appropriate decision, considering the material which has come before it.

7 With the directions as aforesaid, the Writ Petition is disposed of.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.