

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

**CRIMINAL APPLICATION NO.1062 OF 2018
WITH
CRIMINAL APPLICATION NO.1063 OF 2018**

Rajesh Malkitsingh Gade ... Applicant
V/s.
State of Maharashtra and anr. ... Respondents

Ms.Mallika Ingale with Mr.Rushit Thakkar for the Applicant.
Mr.A.R.Kapadnis for the Respondent/State.

**CORAM : PRAKASH D. NAIK, J.
DATE : SEPTEMBER 12, 2018.**

P.C.:

1. In both these applications which are preferred under Section 482 of Criminal Procedure Code, the applicant is seeking bail in Execution Application No.139 of 2017 arising out of order dated 11th December, 2015 and 6th September, 2018 in Consumer Complaint No.108 of 2010 and Execution Application No. 141 of 2017 arising out of order dated 11th December, 2015 and 6th September, 2018 in Consumer Complaint No.109 of 2010 pending on the file of State Consumer Dispute Redressal Commission, Maharashtra, Mumbai. The applicant has prayed that he may be granted bail for a period of four weeks to enable the applicant to prefer an appeal before the appropriate Forum.

2. The applicant is original Opponent No.2 in the Consumer Complaint No.108 of 2010 and 109 of 2010 and Execution Application No.139 of 2017 and 141 of 2017 respectively, which is subject matter of both these applications. Vide judgment and common order dated 11th December, 2015 passed in Consumer Complaint No.108 of 2010, the opponents were directed to pay costs of Rs.35,000/- to the Respondent No.2 and also to hand over unencumbered vacant and peaceful possession of self contained tenement ad-measuring 415 sq.ft. carpet area on the second floor of newly constructed building or hand over unencumbered vacant and peaceful possession of tenement of identical size in the same locality within a period of 45 days from 11th December, 2015. The opponents were given an option to pay total costs calculated on the basis of Ready Reckoner issued by Government of Maharashtra as applicable to the property in the newly constructed building as on 1st January, 2010 for the area of 415 sq.ft. carpet area together with interest at the rate of 9% p.a. from the date of filing of the complaint i.e. from 29th March, 2010 within a period of 45 days from 11th December, 2015, failing which enhanced rate of 12% p.a. to be paid on the amount ordered to be paid till realization. The order

also directed opponents to pay Rs.2,68,387/- towards monthly rent for temporary accommodation at the rate of Rs.2,500/- per month from 1st January, 2007 till date of order with interest at the rate of 9% within 45 days as well as other directions including payment of Rs.3,00,000/- for mental agony. The Registrar was directed to report compliance or to take cognizance of offence for proceeding or otherwise under Section 27 of Consumer Protection Act, 1986 against opponents.

3. Similarly, in Complaint No.109 of 2010 similar directions were given to the opponents, viz. payment of costs of Rs.35,000/- to Respondent No. 2 and to hand over unencumbered vacant and peaceful possession of self-contained tenement ad-measuring 374 sq.ft. carpet area on the first floor of newly constructed building or hand over unencumbered vacant and peaceful possession of tenement of identical size in the same locality within a period of 45 days from 11th December, 2015. The order contained similar other directions as directed in the order passed in Compliant no. 108 of 2010.

4. The Respondent No.2 filed Execution Application Nos.139 of 2017 and 141 of 2017 on 29th November, 2017 for non-compliance of order and judgment dated 11th December, 2015

passed in respective consumer complaints initiated by Respondent No.2. The applicant's contention is that he had appeared before the State Commission on 8th March, 2018 and obtained bail and the matter was adjourned to 18th June, 2018. On 18th June, 2018, the Advocate for the applicant preferred an application for exemption and pointed out to the Court that the copy of the execution application has not been served upon the applicant. The Consumer Court rejected execution application and issued bailable warrant against the applicant and the matter was adjourned to 23rd July, 2018. It is further contended that on 23rd July, 2018 the applicant remained present and the warrant was cancelled by the Trial Court and the matter was then adjourned to 6th September, 2018. The applicant remained present before the Court on 6th September, 2018, wherein the Court has passed order sentencing him to imprisonment till he complies the final order subject to maximum imprisonment of three years and took the applicant into custody and thus, the applicant is in custody from 6th September, 2018. It is further contended that the application for suspension of sentence preferred by the Advocate for the applicant to enable the applicant to file an appeal, was not accepted by the Court.

5. Learned counsel for the applicant submits that the Trial Court has not followed due process of law. The order dated 6th September, 2018 was passed without adhering to the provisions of law. It is submitted that the applicant is convicted without following procedure to conduct trial. The evidence was not recorded and the statement of the applicant was also not recorded under Section 313 of Criminal Procedure Code. It is submitted that although the title of the execution application indicates that the said application was preferred under Section 27 of the Consumer Protection Act and the prayer clause refers to issuance of show cause notice for an action under Section 25 of the said Act. It is submitted that provision of Section 27 of the Consumer Protection Act envisages the conviction which is punishable with imprisonment for a term which shall not be less than one month and extend to three years and with fine which shall not be less than Rs.2,000/- and may extend to Rs.10,000/- or both. It is submitted that there cannot be conviction contemplated under Section 27 of the Act, without complying the procedure established by law. The proceedings before the Consumer Court are to be conducted in accordance with the procedural safeguards contemplated under Chapter XXI of Criminal Procedure Code. It

is submitted that as per Section 262 of Criminal Procedure Code the Magistrate cannot impose sentence of imprisonment for term exceeding three months in case of conviction. It is submitted that on account of not complying procedural safeguard, the inherent powers of the Court under Section 482 of Criminal Procedure Code can be exercised to enable the applicant to prefer an appeal before the appropriate Forum. Learned counsel relied upon the decision of the Apex Court in the case of **Popular Muthiah Vs. State represented by Inspector of Police** in Criminal Appeal Nos.107 and 108 of 2003. Drawing support from the observations made in the said decisions, it is submitted that wherever there is an abuse of process of law, this Court can exercise powers under Section 482 of Criminal Procedure Code. Learned counsel also relied upon the decision of the Andhra Pradesh High Court in the case of **Hill County, Bachupally Vs. A.P.State Consumer Disputes** delivered in Writ Petition No.2521 of 2014. Learned counsel relied upon the orders passed by this Court in Criminal Application No.908 of 2017, Criminal Application No.362 of 2016, Criminal Application No.359 of 2016 and order passed in Writ Petition No.2875 of 2014. It is also submitted that in Writ Petition No.2875 of 2014 the petitioner

therein had challenged order passed by State Commission on the ground that such application is not maintainable and said petition is pending for final disposal.

6. It is thus submitted that the inherent powers of this Court can be exercised for granting the reliefs as prayed in these applications.

7. Learned APP, strongly opposed the relief sought in these applications. It is submitted that this Court cannot entertain these applications for want of jurisdiction. It is submitted that assuming the order was passed by the Consumer Court in exercise of powers under Section 27 of the Consumer Protection Act, the remedy lies before another Forum and when the statutory remedy is available to the applicant, the inherent powers cannot be exercised. It is submitted that the relief sought in this application is to grant bail to enable the applicant to approach the appropriate Forum for seeking the relief. Such a relief cannot be granted by this Court. It is submitted that the proceedings are pending before the Consumer Court since 2010 and the first order was passed by the Consumer Court in 2015. Thereafter, the applicant was supposed to comply the said order and for non-compliance of order the Respondent No.2 was constrained to initiate the execution

proceedings. The concerned Court therefore gave an opportunity to the applicant to comply the order. Initially, bailable warrant was issued against the applicant which was cancelled by the Court and the applicant was afforded an opportunity to comply the said order. However, inspite of giving an opportunity to him, there was non-compliance of the first order of the Court and therefore, vide order dated 6th September, 2018, the applicant was taken in custody till he complies final order. It is thus submitted that there was no abuse of process of law and the Trial Court has rightly passed the order dated 6th September, 2018. It is submitted that assuming that contention of applicant qua the infirmities do exist the said issues can be raised before the authority having power to entertain the appeal against the order dated 6th September, 2018 and this Court cannot grant bail in exercise of powers under Section 482 of Cr.P.C. It is submitted that the decisions relied upon by the learned counsel for the applicant were delivered in the facts and circumstances of the said case and the same are not applicable in the present case. The applicant is not entitled for the relief, as there is non-compliance of the directions of the Consumer Court by the applicant. It is submitted that in the earlier orders passed by this Court, the issue of

jurisdiction is not dealt with by this Court.

8. Having heard both the sides, I have perused the documents which are annexed to this application and the orders which are subject matter of the present proceedings. I have also considered decisions relied upon by the applicant and the earlier orders passed by this Court. The factual matrix of the present case indicates that the complaints were filed by the Respondent No.2 in the year 2010 against Dwelling House Construction Company, applicant and Jitendra Gade. The grievance of the Respondent No.2 in the said complaints is that the opponents has failed to honour the obligation under the registered agreement to deliver the possession of newly constructed tenement on the pretext that complainant surrendered the claim of new tenement and part consideration of Rs.5,00,000/- was paid by cheque on 16th November, 2017. By order dated 11th December, 2015, both the complaints were adjudicated and directions were issued to the opponents as stated above. It is submitted by the Advocate for the applicant that the aforesaid order has challenged by the applicant before the National Commission. However, apparently no protection is granted to the applicant by the higher forum. The Respondent No.2 was therefore, constrained to initiate Execution

Application No.EA/17/141 and EA/17/139. Executants alleged that the opponents have left their last known residence and residing elsewhere and with great efforts presence of applicant could be sought through aid of State Commission. The applicant remained present before the Commission on 8th March, 2018. His statement was recorded. He assured that he will pay money and sought time. The other partner remained elusive and absent despite efforts taken by executants. The execution application was filed on 19th November, 2017. The Court issued bailable warrant against other accused. The applicant preferred an application to release him on bail. The Court issued bailable warrant against the other accused. The applicant preferred an application to release him on bail. The Court directed the applicant be released on PR bond of Rs.10,000/- with one surety of like amount in each case. Time was granted to furnish surety. The case was adjourned to 25th April, 2018. On the next date of hearing, the applicant remained present before the Forum and he was directed to attend the State Commission on the next date with a warning that in case he fails to comply the final order, he shall be proceeded under Section 27 of the Consumer Protection Act and the case was adjourned to 18th June, 2018. On the subsequent date, the

applicant was absent. The Presiding Officer has observed that inspite of direction and warning the applicant had remained absent. Bailable warrant was issued. The case was then adjourned to 23rd July, 2018. On the next date, the applicant remained present before the forum and preferred application for cancellation of bailable warrant. He was permitted to furnish PR bond in a sum of Rs.15,000/-. Eight days time was granted to furnish surety. The case was thereafter adjourned to 6th September, 2018. On 6th September, 2018, by common order passed by the State Consumer Dispute Redressal Commission, the applicant was taken in custody. While passing the said order, it was observed that there is no compliance of final order and one of the partner has remained absent despite view taken by the executants to compel his present. In the absence of compliance of final order in view of Section 27 of the Consumer Protection Act, the Forum is required to record a finding that there is no bonafide intention on his part to comply the final order as passed in Complaint Nos.108 of 2010 and 109 of 2010 and therefore, there is deliberate disobedience to comply with the final order. In case compliance is made convict shall be released forthwith. It was further observed that applicant shall remain in custody till he

complies final order subject to maximum imprisonment of three years as contemplated under Section 27 of the Act. Thus, it is evident that the final order was passed by the Consumer Forum in 2015, which was not complied by the Opponent therein and thereafter, the execution proceedings were initiated against the applicant and other persons and although there is a challenge as contended by the Advocate for the applicant to the first order passed by the Consumer Forum, there is no order either setting aside the said order or grant of stay to the said order. The presence of applicant was sought with great difficulty. Proceedings were pending before the forum since 2010 and opportunity was given to the opponents to comply the said directions. Since the applicant intends to challenge the order dated 6th September, 2018 passed by the Consumer Forum, it would not be appropriate to make any observations on the merits of the said order. It is prayed that to enable the applicant to challenge the order before the higher forum, the applicant be released on bail for temporary period. Contention of the applicant is that for not following the procedure, this Court in exercise of powers under Section 482 Cr.P.C., the applicant be granted bail for a period of four weeks to enable him to approach the appropriate Authority. As stated

above, learned counsel has relied upon decisions and orders. The decision of the Supreme Court in the case of **Popular Muthiah** dealt with an issue whether powers under Section 482 Cr.P.C. can be exercised while hearing appeal/revision. It was held that High Court can exercise inherent powers irrespective of nature of proceedings. The said decision was delivered in a different context and cannot be made applicable in this case. The applicants prayer is to grant protection of bail till he prefers the appeal otherwise also the order passed by the commission can be challenged before the appellate authority under Section 27A of the said Act. That the order passed by State Commission without following procedure is a question which will have to be dealt by appropriate forum and not by this Court. In the case of **Popular Muthiah** the facts indicate that while hearing an appeal preferred by accused who was tried and convicted, the High Court realized that there was evidence against Popular Muthiah and he was deliberately left out by the Investigating Officer, hence, the High Court directed that prosecution be launched against him. The said direction was challenged before the Apex Court on the ground that while dealing with appeal against conviction preferred by accused, the High Court cannot pass such order.

Hence, the question arose whether High Court can exercise inherent powers in appeal or revision and in the light of factual aspects, it was observed that Cr.P.C. is an exhaustive code providing machinery to investigate and try cases and provide corrective mechanism. The High Court has inherent powers to correct errors of Courts below to prevent abuse of process of law. In the present case as stated above the applicant's prayer is to grant bail for a period of four weeks to enable the applicant to approach the appropriate Authority challenging the order dated 6th September, 2018. While granting relief, in the earlier orders referred by learned advocate the preliminary objections raised by the learned APP was not considered. In the decision of Andhra Pradesh High Court, the Petitioner had preferred the application challenging maintainability of application under Section 27 of the Consumer Protection Act, before State Commission. Their appeal was pending before the National Commission against the first order. The aforesaid applications were rejected by Commission, hence they preferred writ petitions. The respondents objected the petitions on the ground that remedy of appeal is available under Section 27-A of the said Act. The Court accepted the contention of petitioners that order under Section 27 was yet to be passed and

hence, question of preferring appeal under Section 27-A of the Act does not arise. Thus, the said decision was delivered in different situations. Admittedly, the applicant intends to challenge the order before the Appellate Authority i.e. the National Commission. In the circumstances, in exercise of powers under Section 482 of Cr.P.C. this Court cannot grant bail to the applicant to enable him to prefer an appeal before the appropriate Authority. The Infirmary, if any, as contended by the learned counsel for the applicant can be subject matter of the appropriate appeal, which would be preferred by the applicant. Relief prayed herein cannot be granted in these applications. Such applications cannot be entertained by this Court. The applications are without jurisdiction and the same are dismissed.

(PRAKASH D. NAIK,J.)

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**Priya
Rajesh
Soparkar**

Digitally signed
by Priya Rajesh
Soparkar
Date: 2018.09.27
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