

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

CRIMINAL WRIT PETITION NO. 659 OF 2019

Ravindra D. Hingwala Since Deceased
Through His Legal Representative
Jyoti Ravindra Hingwala

...Petitioner

Versus

M/s. Satellite Developers Pvt. Ltd.
& Ors.

...Respondents

Mr. S.G. Deshmukh i/b. Mr. N.N. Bhosle for Petitioner.
Mr. Manoj Mohite a/w. Mr. Kushal Mor i/b. Mr. A.D. Kanani for
Respondent No. 1.
Mrs. G.P. Mulekar, APP for Respondent – State.

CORAM : S.S. SHINDE, J.

DATE : 9th SEPTEMBER 2019

PER COURT:

1. Heard learned counsel appearing for the Petitioner and learned counsel appearing for contesting Respondent. According to the learned counsel appearing for the Petitioner in Para 21 of the judgment of Metropolitan Magistrate 73rd Court, Vikroli, Mumbai, the said Court has recorded finding of conviction against Accused No. 1 and 3, however, in operative part of the order only Accused No. 3 is sentenced and inspite of finding in Para 21 of the said judgment, no order of sentence is passed against original Accused No. 1. It is submitted that, Revisional Court has not

properly considered the contention of the Petitioner and mechanically rejected the revision filed by the Petitioner. At the cost of repetition, learned counsel appearing for the Petitioner would urge that, when the finding of conviction as against Accused No. 1 and 3 are recorded in Para 21 of the judgment of the learned Magistrate, the sentence should have been followed even as against Accused No. 1. Therefore, he submits that, petition deserves consideration.

2. Learned counsel appearing for contesting Respondent invites attention of this Court to Para 21 of the judgment of learned Magistrate and also Para 23 and 24 and also the operative part of the order and submits that, while referring the Accused No. 3 words “has” and “he” is mentioned in Para 23 and 24 and as it is clear from the operative part of the order that only Accused No. 3 Kiran Popatlal Amit is sentenced. He submits that, if the petitioner was aggrieved by the order of learned Magistrate, in that case it was open for the Petitioner to avail of an appropriate remedy as available in law.

3. Upon appreciating rival contentions and perusal of the order passed by the learned Magistrate and in particular Para 21, it is true that at one place, the Court has mentioned “they have committed an offence punishable under Section 13(1) of MOFA”. However, in Para 23 and 24 and also in the

operative part of the order only reference is made to the Accused No. 3 Kiran Popatlal Amin. Since the words “has” and “he” has been mentioned in Para 23 and 24 and as it is clear that, only Accused No. 3-Kiran Popatlal Amin is sentenced. In that view of the matter, it is difficult to comprehend the submissions made by the learned counsel for the Petitioner and to cause interference in the order passed by the learned Magistrate and to clarify that even the said Court ought to have sentenced by imposing fine to Accused No. 1. In that view of the matter, this Court is of the opinion that, said prayer deserves no consideration while exercising writ jurisdiction. However, in case, remedy is available to the Petitioner including filing of appeal challenging the order of Magistrate, in that case, Petitioner may avail such remedy. In case remedy is availed, the concerned Court to decide the said proceeding in accordance with law. With the above observations, writ petition stands rejected.

[S.S. SHINDE, J.]