

Vidya Amin.

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

CRIMINAL APPLICATION NO. 238 OF 2017

The Ashutosh Cooperative Housing
Society Ltd. & Ors.

... Applicants

VS.

The State of Maharashtra & Anr.

... Respondents

Mr. Karansingh B. Rajput, Advocate for the applicants.

Mrs. Veera Shinde, APP for respondent No. 1/State.

Mrs. Anamika Malhotra a/w. Kunal Waghmare, Advocate for
respondent No. 2/MCGM.

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: 14th January, 2019

P.C. :

This Criminal Application is filed under section 482 of Cr. P.C. seeking orders to set aside the private complaint bearing No. 42029831/SS/2014 which is pending before Metropolitan Magistrate, 42nd Court, Shindewadi, Mumbai for the offences punishable under section 381 r/w. 471 of Mumbai Municipal Corporation Act, 1988. The respondent-Corporation has issued notice dated 10th June, 2014 to all the three applicants and the owner of Flat No. 44 for leakage and seepage of water.

2. Applicant No. 1 is a Cooperative Housing Society. Applicant

No. 2 is the Chairman and Applicant No. 2 is the associates member of the Society. The complaint was filed on 7th August, 2014 pursuant to the notice and process was issued under the relevant section. This Application is moved by the criminal parties.

3. The learned counsel for the applicants/accused submitted that the incident of leakage and seepage from Flat No. 44 to Flat No. 34 of the Society was observed by D-Ward officers of the Corporation in May and June, 2014. Now that flat is repaired and there is no seepage or leakage from Flat No. 44 to Flat No. 34. The owner of Flat No. 34 is no more.

4. The learned counsel for the Corporation does not controvert the position, as there is no report of any BMC officer of the visit. She submits to the order of the Court.

5. In view of the submissions and as four years have passed from the date of the notice and the complaint and accepting the statement made by the learned counsel for the applicants/accused, on instructions, that seepage and leakage from Flat No. 44 to Flat No. 34 is stopped, nothing survives in this

Application and it can be disposed of with the following order:

- (i) Criminal Application is allowed in terms of prayer clause (a);
- (ii) The proceedings in the private complaint No. 42029831/SS/2014 pending before the Metropolitan Magistrate, 42nd Court, Shindewadi, Mumbai is quashed and set aside;
- (iii) Summons issued are quashed and set aside;
- (iv) If in future, there is any seepage or leakage from Flat No. 44 to Flat No. 34, the applicants alongwith the owner or occupier of Flat no. 44, shall take necessary steps.

(MRIDULA BHATKAR, J.)