

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1013 OF 2017**

Suryakant Shardaprasad Sharma .. Applicant

Vs

The State of Maharashtra & Ors. .. Respondents

...

Mr. Osman Chisthy i/b Ashoka Law Firm for the Applicant.

Mr. H.J. Dedhia, A.P.P. for the State.

Mr. Rohit Gupta i/b Mr. Chirag Chanani for Respondent No.2.

CORAM: SMT. BHARATI DANGRE, J.

DATED : 24TH SEPTEMBER, 2019.

P.C:-

1. The Criminal Application prays for quashing and setting aside of charges framed against the present Applicant under Sections 3, 4, 5, 6, 7, 10, 11, 12 and 13 of the Maharashtra Ownership of Flats Act, 1963 ("MOFA") read with Section 506(2), 420 and 34 of the IPC by the Metropolitan Magistrate Court at Andheri, Mumbai.

2. With the assistance of the learned counsel for the parties, I have perused the relevant documents placed on record, which include an Agreement to Sell as well as an Irrevocable General

Power of Attorney executed in favour of the Applicant on 23/03/1998. The learned counsel for the Applicant has specifically canvassed that the Applicant had no role to play in the entire episode though in the complaint filed by the Complainant, it is alleged that Accused Nos.2 and 3 are acting and looking after the day-to-day affairs and management of Accused No.1 - M/s. S.S. & Co., a partnership firm carrying on business of building constructions as builders / developers / contractors. My attention is invited to paragraph 2 of the said complaint where the partners of the firm have been categorically referred as 'Shri Sohanlal C. Jain' and 'Shri Sharda Prasad Ganesh Sharma'. My attention is also invited to the Verification Statement of the Complainant wherein the role attributed to the present Applicant is as partner of Accused No.1.

3. In the evidence before charge which has been placed on record at Ex-F (Page No.45), the Complainant in the cross-examination has made a reference to the Power of Attorney and has admitted that Accused No.3 is not a partner of Accused No.1 but a Power of Attorney holder of Accused No.2 and the deceased partner Sharda Prasad Ganesh Sharma. The Irrevocable General Power of Attorney executed on 23/03/1998 in favour of the present Applicant is signed by the late Sharda Prasad Ganesh Sharma, father of the Applicant and Mr. Sohanlal Chunilal Jain. Perusal of the covenants of the Irrevocable General Power of

Attorney discloses that the Applicant has been given powers to undertake all acts in respect of sale, transfer and development of the property and disposing of the same effectively in the manner the attorney deems fit and proper and also to receive consideration from the buyers or developers and to discharge the responsibilities. Clause 8 of the said Power of Attorney states that the Power of Attorney is irrevocable and the same shall not be revoked or terminated by notice or otherwise.

4. Based on the said Power of Attorney, the charges framed against the present Applicant cannot be said to be a onerous and, on the other hand, specific role has been attributed to the Applicant. Since the proceedings are at the stage where the charges have been framed by the Court, the actual nature of transaction undertaken and the *inter se* relation between the Applicant and the Accused cannot be gone into, at this stage.

5. In such circumstances, the Criminal Application is dismissed. No order as to costs.

(SMT. BHARATI DANGRE, J.)