

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) NO. 195 OF 2018

MRS. HANSA RAMESH BATAVIA } APPLICANT

V/S.

STATE OF MAHARASHTRA
AND ANR. } RESPONDENTS

* * * *

Mr. Mohammed Umar Kazi a/w. Mr. Ammar I. Nizami,
Advocate for the applicant.

Mr. A.R. Patil, APP for State-respondent no.1.

Mr. Nilabh Tashnival i/by. Mr. Ashish Pawar, Advocate for
respondent no.2.

PSI, Investigating Officer, Mr. N.B. Kawade, from Crime Branch, Unit-III, Kalyan present.

Coram : Sandeep K. Shinde, J.

Thursday, 16th December, 2021.

P.C. :

1. Heard learned Counsel for the applicant and learned APP for State. PSI, Mr. N.B. Kawade, from Crime Branch, Unit-III, Kalyan is present.

2. Applicant is accused in Crime No.I-175/2011 registered at Bazar Peth Police Station, Kalyan. In the course of investigation, Investigating Officer vide order dated 28th January, 2012 directed the Managing Committee of Dewan Mansion Co-operative Housing Society Ltd., Ambadi Road, Vasai (W) that, it shall not permit the applicant, to transfer, sell and/or assign his rights in the Flat Bearing No.102, A-Wing, 1st Floor of Dewan Mansion Co-operative Housing Society Ltd., Ambadi Road, Vasai (W) to any person. Being aggrieved by such order, applicant vide application below Exhibit-16 sought directions to police to withdraw the order/letter dated 28th January, 2012. The learned Judicial Magistrate First Class, vide order dated 21st October, 2015 rejected the application. After which, applicant sought its revision. The learned Additional Sessions Judge, Kalyan vide order dated 13th November, 2017 rejected the Criminal Revision Application No. 147/2015. Hence, the applicant has approached this Court in application under Section 482 of the Criminal Procedure Code.

3. Mr. Patil, learned APP for the State, on instructions submits that, original order dated 28th January, 2012 issued, to the Managing Committee of the Dewan Mansion Co-operative Housing Society Ltd, is not available on record. However, in all fairness, Mr. Patil submitted that, Investigating Officer could not have issued such directions for want of powers. Indisputedly, Section 102 of the Criminal Procedure Code, does not empower the Investigating Officer to issue such directions. Therefore, the order dated 28th January, 2012 issued to Dewan Mansion Co-operative Housing Society Ltd, by the Investigating Officer in Crime-I-175/2011 was illegal. Accordingly, it is quashed and set aside. Petition is allowed in the aforesaid terms and disposed off.

4. All concerned to act on authenticated copy of this order.

Digitally
signed by
NEETA
SHAILESH
SAWANT
Date:
2021.12.17
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+0530

(Sandeep K. Shinde, J.)