

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.167 OF 2019

1. DSD Progressive Associates,
a partnership firm, through its Partner,
Dhananjay S/o. Laxmanrao Deshpande,
Having its office at DSD Vishwa,
Tahsil Road, Buldhana.
2. Dhananjay S/o. Laxmanrao Deshpande,
Aged about 50 years,
Occupation: Business,
3. Nitin S/o. Wasudeo Saoji,
Aged about 52 years,
Occupation : Business,
4. Ajay S/o. Janrao Dhage,
Aged about 56 years,
Occupation : Business,

Petitioner Nos. 2 to 4
residents of DSD House,
Near Tahsil Square, Dalal Layout,
Buldhana.

— (Original Non-Applicant
Nos.4 to 7)

....PETITIONERS

---- VERSUS ----

1. Shirish S/o. Premchand Jain,
Aged about 42 years, Occupation : Service,
R/o. DSD Dalal Lay-out,
House No.5, Tahsil Road, Buldhana.
2. Police Station Officer,
Police Station – Buldhana City,
Buldhana.

-- (Ori. Applicant)

-- (Ori.Non-Applicant No.1)

.... RESPONDENTS.

Mr. Anand S. Jaiswal, Senior Advocate with Mr. N. G. Mohrir, Advocate for the petitioners.

Shri U. J. Deshpande, Advocate for the respondent No.1.

Shri S. M. Ghodeswar, A.P.P for the respondent No.2/State.

**CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATE : 21.09.2021.

JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Heard.

2. **Rule.** Rule is made returnable forthwith.

3. By this petition under Article 226 and 227 of the Constitution of India, the petitioners are challenging judgment and order dated 02.02.2019 passed by the Additional Sessions Judge, Buldhana allowing Criminal Revision No.3/2017 arising out of rejection of Miscellaneous Criminal Case No.443/2016 by which the learned Judicial Magistrate First Class (Court No.3), Buldhana rejected request for investigation under Section 153(3) of the Code of Criminal Procedure.

4. The respondent No.1 herein filed Miscellaneous Criminal Case No.443/2016 for a direction to conduct investigation into the offences alleged against the petitioners herein under Sections 3, 4, 4A, 5, 6, 7, 8, 10, 11 and 12A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 and Sections 406, 420 and 120-B of the Indian Penal Code. The learned Judicial Magistrate First Class (Court No.3), Buldhana by order dated 17.12.2016 rejected the said application. The respondent No.1 therefore filed

Criminal Revision No.3/2017, which is allowed by the impugned judgment and order dated 02.02.2019. The petitioners have challenged the said order dated 02.02.2019 by way of present petition along with the First Information Report registered in consequence of the said order.

5. Mr. Anand Jaiswal, the learned Senior Advocate along with Mr. N. G. Moharil, learned Advocate for the petitioner submitted that the petitioners were not made party to the revision application and the said revision has been allowed without giving opportunity of hearing to the present petitioners. Mr. U. J. Deshpande, the learned Advocate appearing for the respondent No.1 does not dispute the position that the petitioners were not made party to the said revision application, but submitted that it is not necessary for the respondent No.1 to add the petitioners as respondents to the said criminal revision application.

6. Mr. Anand Jaiswal, the learned Senior Advocate invited our attention to the judgment of the Hon'ble Apex Court in the case of *Manharibhai Muljibhai Kakadia & Anr. Vs. Shaileshbhai Mohanbhai Patel & Ors.* reported in *(2012) 10 SCC 517*, wherein the Hon'ble Apex Court has taken a view that any revision challenging order under Section 156(3) of the Code of Criminal Procedure, the accused is necessary party. We are, therefore,

satisfied that the issue involved in the present Writ Petition is squarely covered by the judgment in the case of ***Manharibhai Kakadia*** (*supra*).

7. We therefore, pass following order.

i] The impugned judgment and order dated 02.02.2019 passed by the Additional Sessions Judge, Buldhana in Criminal Revision No.3/2017 is quashed and set aside.

ii] The consequent First Information Report No.82/2019, dated 18.02.2019 (Annexure-K) registered with the Police Station Buldhana City for the offences punishable 463, 467 and 471 of the Indian Penal Code and under the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 is also quashed and set aside.

iii] The Criminal Revision No.3/2017 stands revive and restore to the file of the Additional Sessions Judge, Buldhana.

iv] The respondent No.1 shall add present petitioners as respondents in the said Criminal Revision and the learned Additional Sessions Judge, Buldhana is directed to decide the Criminal Revision No.3/2017 on its own merits and according to law, after giving opportunity of hearing to the present petitioners.

8. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

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