

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

CRIMINAL WRIT PETITION NO. 1013 OF 2022

SANTOSH
SUBHASH
KULKARNI

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1. Uma Bhimrao Naik
Age : 77 years, residing at Flat No.39,
Kashmira Ameeta Co-op. Hsg. Society
Ltd., 7G Jagannath Bhonsale Marg,
Opp. Mantralaya, Nariman Point,
Mumbai – 400 021
2. Sushil Kumar Agrawal
Age : 66 years, residing at Flat No.14,
Kashmira Ameeta Co-op. Hsg. Society
Ltd., 7G Jagannath Bhonsale Marg,
Opp. Mantralaya, Nariman Point,
Mumbai – 400 021

...Petitioner

Versus

1. State of Maharashtra
Through the Public Prosecutor
2. Municipal Corporation of Greater
Bombay, office of Assitant
Commissioner, 'A' Ward Municipal
Office, 134/E Shahid Bhagatsingh
Road, Kala Ghoda, Fort,
Mumbai – 400 001.
3. Mrs. Niru Kanodia,
Age : 55 years, An adult Inhabitant
residing at Flat No.49, Kashmira
Ameeta Co-op. Hsg. Society Ltd., 7G
Jagannath Bhonsale Marg, Opp.
Mantralaya, Nariman Point, Mumbai –
400 021
4. Mukesh Mehta
Age : 61 years, An adult Indian
Inhabitant Residing at Flat No.54,
Kashmira Ameeta Co-op. Hsg. Society
Ltd., 7G Jagannath Bhonsale Marg,
Opp. Mantralaya, Nariman Point,
Mumbai – 400 021

...Respondents

Mr. Niranjan Mundargi, i/b Mr. Sukand Kulkarni, for the
Petitioners.

Mr. A. Y. Sakhare, a/w Kunal Waghmare, for Respondent
no.2/MCGM.

Mr. Amod Ekhaspur, for Respondent no.3.

Mr. S. R. Agarkar, APP for the State.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 4th MAY, 2022

PRONOUNCED ON: 9th JUNE, 2022

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsels for the parties, heard finally.

2. Petitioner nos.1 and 2, who are former and incumbent Chairpersons, respectively, of Ameeta Co-operative Housing Society Ltd., have preferred this petition to quash and set aside the proceedings in Complaint CC No.4114979/SS/2015 pending on the file of the learned Metropolitan Magistrate, 41st Court, Shindewadi, Mumbai, for the offence punishable under Section 381 read with Section 471 of the Mumbai Municipal Corporation Act, 1988 ("the Municipal Corporation Act").

3. The petition arises in the backdrop of the following facts:

(a) On 9th June, 2015, respondent no.2 – Municipal Corporation addressed a notice to Mr. Mukesh Mehta, respondent no.4, the occupier of Flat No.51, 11th Floor, Kashmira Ameeta Co-operative Housing Society Ltd., ("the Society"), petitioner no.1, the then Chairperson, and petitioner

no.2, the then Secretary, of the Society, under Section 381 of the Municipal Corporation Act to discontinue or abate the nuisance or/and to prevent its recurrence by taking effective measures and work as indicated therein, namely, to locate the exact source/cause of leakage and abate the nuisance by proper means. The said notice was issued as respondent no.3 had filed the complaint with the Municipal Corporation regarding leakage from the South-East bathroom of Flat No.54, on the 11th Floor, into the ceiling and side walls of the bathroom and bedroom of respondent no.3's flat, on the 10th floor. Eventually, alleging that the nuisance was not abated and action was not taken in conformity with the said notice, a complaint was lodged by the authorized officer of the Municipal Corporation in the Court of the learned Metropolitan Magistrate, 41st Court, Shindewaid, Mumbai, leading to CC No.4114979/SS/2015.

4. The petitioners preferred an application for discharge (Exhibit-59) asserting, *inter alia*, that the nuisance complained of was, in fact, abated and the *de facto* complainant's grievance was duly redressed. By an order dated 24th January, 2022, the learned Metropolitan Magistrate was persuaded to reject the application holding, *inter alia*, that the nuisance was not abated during the period stipulated in the notice and even otherwise in

a summons trial there was no provision for discharge of the accused.

5. Mr. Mundargi, the learned Senior Counsel for the petitioners, submitted that the continuation of the prosecution against the petitioners, who are senior citizens, constitutes an abuse of the process of the Court. Laying emphasis on the fact that there is overwhelming material to demonstrate that the nuisance, as alleged, was abated and the grievance of the *de facto* complainant stood redressed, Mr. Mundargi would urge that the ends of justice would be secured by quashing and setting aside the prosecution.

6. Attention of the Court was invited to the Inspection Report dated 1st April, 2017, which records that no leakage/dampness of ceiling and side walls of bathroom and bedroom, as complained of, in the notice under Section 381 dated 9th June, 2015, was found. Banking upon a communication dated 9th March, 2022 addressed by respondent no.3 – the *de facto* complainant, wherein respondent no.3 categorically asserted that the nuisance of leakage had been abated and resolved and respondent no.3 had informed the said fact to the Municipal Corporation vide letter dated 10th January, 2017, Mr. Mundargi

submitted that the continuation of the prosecution is wholly unwarranted.

7. In the said letter dated 9th March, 2022, respondent no.3 has indeed asserted that the nuisance was abated and the said fact was brought to the notice of the Municipal Corporation vide letter dated 10th January, 2017. Respondent no.3 further confirmed that as of date there was no leakage from the upper floor into her flat.

8. Respondent no.3 has appeared and filed an affidavit giving her no objection to quash the proceedings. Paragraphs 3 to 5 of the affidavit of Mrs. Niru Kanodia – respondent no.3 read as under:

“3. I say that the nuisance of leakage has been abated and the same was informed by me to the Respondent no.2 vide my letter dated 10th January, 2017. I say that thereafter, I also addressed a letter dated 9th March, 2022 to the Managing Committee of the Society thereby *inter alia* intimating and confirming that the said nuisance of leakage in my flat has been stopped and abated. Copy of my letter dated 9th March, 2022 addressed to the Managing Committee of the Society is forming part of the petition as “*Exhibit V*”.

4. I confirm and reiterate that as on date there is no leakage from the said bathroom in my flat no.49 and the nuisance has been abated and resolved.

5. I say that I have no objection if the said complaint is quashed as the nuisance has been abated and resolved.”

9. Additionally, it is imperative to note that, in the Inspection Report dated 31st March, 2017 the designated officer of the

Municipal Corporation has in terms recorded that at the time of the inspection it was observed that there was no leakage/dampness of ceiling of side walls of bathroom and bedroom, as complained of in the notice under Section 381 of the Municipal Corporation Act. It further records that respondent no.3 had handed over a letter dated 10th January, 2017 confirming that at that point of time the leakage had stopped.

10. In the light of the aforesaid material, it becomes evident that remedial measures to arrest the nuisance were taken by the petitioners and the concerned. The nuisance was duly abated. The *de facto* complainant's grievance stood redressed. Evidently, the authorized officer of the Municipal Corporation lodged the complaint before the learned Magistrate, in the year 2015 itself. However, since the nuisance stood abated as back as 2017 and the said fact was duly verified and reported by the designated officer of the Municipal Corporation and even the *de facto* complainant has now no subsisting grievance, continuation of the prosecution would serve no fruitful purpose. In the totality of the circumstances, the quashing of the proceedings in CC No.4114979/SS/2015 would secure the ends of justice.

11. Hence, the following order:

: O R D E R :

- (i) The petition stands allowed.
- (ii) The proceedings in Complaint CC No.4114979/SS/2015 pending on the file of the learned Metropolitan Magistrate, 41st Court, Shindewadi, Mumbai, stands quashed and set aside.

Rule made absolute in the aforesaid terms.

All concerned to act on an authenticated copy of this judgment.

[N. J. JAMADAR, J.]