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

CRIMINAL APPLICATION NO.186 OF 2019

Ravi Rajan Pandayan	... Applicant
V/s.	
The State of Maharashtra	... Respondent

**WITH
CRIMINAL APPLICATION NO.515 OF 2019
IN
CRIMINAL APPLICATION NO.186 OF 2019
WITH
WRIT PETITION NO.1777 OF 2019**

Sunderlal Sitaram Nirban	... Petitioner
V/s.	
The State of Maharashtra & Anr.	... Respondents

Mr. Deepak R. Kushwaha for the applicant.

Mr. Rakesh Agrawal for the petitioner.

Mr. A.R. Patil, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 20, 2022

P.C.:

1. Both the petitions arise out of order dated 20th October 2018 passed by the learned Sessions Judge, Mumbai, partly allowing the Criminal Revision Application No.6 of 2018 which arose out of rejection of discharge application filed by the applicant in Criminal Application No.186 of 2019.

2. The petitioner in Writ Petition No.1777 of 2019 is complainant and the applicant in Criminal Application No.186 of

2019 is the accused.

3. The complainant filed F.I.R. No.224 of 2012 against the applicant for offences under sections 420, 465, 467, 468, 471, 507 and 193 of the Indian Penal Code, 1860 alleging that the accused was inducted in the premises owned by the complainant on the basis of registered leave and licence agreement. The complainant initiated proceedings under the provisions of the Maharashtra Rent Control Act, 1999 and got eviction order in their favour.

4. According to the complainant, during pendency of said proceedings the accused prepared MoU dated 30th March 2009 which was in the nature of agreement to sale executed by the complainant in favour of the accused. According to the complainant, the said agreement to sale dated 30th March, 2011 is forged and fabricated document and, therefore, filed a complaint before the concerned police station.

5. After completion of investigation, charge-sheet came to be filed against the accused person. The accused, therefore, filed application for discharge which came to be rejected by the order dated 16th November, 2017.

6. The applicant, therefore, filed Criminal Revision Application No.6 of 2018 which has been partly allowed by the impugned order. The learned Sessions Judge discharged the applicant for all offences under sections 465, 471, 193 of the Indian Penal Code, 1860 and directed that the applicant be tried for offences punishable under sections 420, 467, 468, 507 of the Indian Penal Code. Aggrieved thereby, the complainant and the accused have

filed present proceedings.

7. The learned advocate for the petitioner in Writ Petition No.1777 of 2019 submitted that the complainant was not made party to the revision filed by the accused person and, therefore, the impugned order deserves to be set aside only on this count. In support of this submission, he relied on the judgment of this Court in the case of **Kalyani Buty Vs. The State of Maharashtra** reported in (2012) All.M.R. (Cri) 834 and **J.K. International Vs. State (N.C.T.) of Delhi** reported in 2001 AIR(SC) 1142 and **Shriram Nagordhar Mahajan & Others Vs. State of Maharashtra** reported in 2006 All.M.R. (Cri) 1311.

8. *Per contra*, the learned advocate for the applicant in Criminal Application No.186 of 2019 invited my attention to the ingredients of sections 465 and 467 to submit that based on the analogy for discharging the accused for the offences under sections 465, 471 and 193, the applicant need to be discharged for remaining offences.

9. On careful perusal of the impugned order, it appears that the complainant was not made party to the revision filed by the accused person. This Court in the case of **Shriram Nagordhar Mahajan & Others** in paragraph 11 and 18 are held as under:

“11. From the perusal of section 399, it can be seen that the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under section 401 of the Code of Criminal Procedure. From the bare reading of section 401(2) and section 399, it can thus be seen that no order under the revisional jurisdiction could be made to the prejudice of the accused or other person unless he had an

opportunity of being heard either personally or by pleader in his own defence, “Person” has not been defined under the Code of Criminal Procedure. Sub-section (42) of section 3 of the General Clauses Act, 1897 defines “person” as under.

“(42) “person” shall include any company or association or body of individuals, whether incorporated or not”

Section 11 of the Indian Penal Code defines “person” as under.

“11. “Person”. The word “person’ includes any company or Association or body of persons, whether incorporated or not.”

“18. In that view of the matter, the order passed by the learned revisional Court was patently in violation of the mandate of sub-section (2) of section 401 of the Code of Criminal Procedure. It is to be noted that in section 439(2) of the Old Criminal Procedure Code of 1898, the only word used was “the accused”. The words, “or other persons” are mentioned for the first time in the Criminal Procedure Code of 1973. It can thus be clearly seen that the legislative intent of introducing the words “or any other person” also appear to give an opportunity of being heard to any person who is likely to be prejudicially affected by the order of the revisional Court. This appears to be necessary for advancement of the cause of justice and in consonance with the principles of natural justice. I have, therefore, no hesitation to hold that before the order is passed to the prejudice of any person, it is necessary for the revisional Court to hear him in view of the provisions of sub-section (2) of section 401 of the Code of Criminal Procedure.”

10. It needs to be noted that in the facts of the case before this Court in the case of **Shriram Nagordhar Mahajan & Others** (supra), the Sessions Court modified the order of issuance of process without hearing the complainant. In a challenge made by the complainant before this Court, it was held that while exercising

power under section 401(2) and section 399, the revisional Court cannot pass any order to the prejudice of other person which is interpreted to main complainant.

11. In view of the nature of order passed by the revisional Court, it would be in the interest of justice that the impugned order is set aside and the proceedings are remanded back to the revisional Court for decision afresh on merits after giving opportunity of hearing to the complainant. Hence, following order:

- a) The impugned order dated 20th October 2018 in Criminal Revision Application No.6 of 2018 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Mumbai is quashed and set aside;
- b) The applicant in Criminal Application No.186 of 2019 shall add complainant as respondent No.2 in the revision application;
- c) Amendment shall be carried out within four (4) weeks from today;
- d) Parties shall appear before the learned Sessions Judge on 16th January, 2023. The learned Sessions Judge thereafter shall decide the Criminal Revision Application No.6 of 2018 in accordance with law.

13. Criminal Application Nos. 186 of 2019, 515 of 2019 and Writ Petition No.1777 of 2019 are disposed of in above terms. No costs.

(AMIT BORKAR, J.)