

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

CRIMINAL REVISION APPLICATION NO.226 OF 2017

Ashok Atmaram Deshmukh

...Applicant

Versus

Ms/ Samyak Holdings Pvt. Ltd.

(Now Known As Vyom Realtors Pvt. Ltd.)

and Ors.

...Respondents

WITH

CRIMINAL REVISION APPLICATION NO.278 OF 2017

Ashok Atmaram Deshmukh

...Applicant

Versus

The State of Maharashtra and Ors.

...Respondents

....

Mr.Ashok Mishra a/w Mr.Shubham Mishra, Advocate for Applicant.

Mr.Yashpal M. Thakur, Advocate for Respondent Nos. 2 & 3.

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

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CORAM : PRAKASH D. NAIK, J.

DATE : 30th SEPTEMBER 2022

PC :

1. Applicant is the original complainant in C.C. No. 204/SW/2013 filed before the Court of learned Additional Chief Metropolitan Magistrate, 65th Court Andheri, Mumbai.

2. The brief facts of the complaint are as follows:-

(a) The accused No.1 is the Company engaged in the business of construction. The accused Nos. 2 to 9 are partners and Directors of

accused No.1 company and its sister concerns M/s. M.N. Corporation Pvt. Ltd., Mehul Realtors Pvt. Ltd, Vyom Realtors Pvt. Ltd., B. M. Developers, M/s. Earth Developers, M/s. Jay Interprise etc. The accused Nos. 10 to 17 are associates of accused Nos.1 to 9. Accused Nos.18 to 30 had actively participated in preparation of forged and fabricated documents by accused No.1 to 17 for the purpose of registration of society for usurping valuable immovable property of Shri. Ganpat Co-operative Housing Society Ltd. The accused Nos. 18 to 30 were acting at the behest of accused No.1 to 17 and became member of the syndicate formed by accused Nos.1 to 17 to usurp valuable immovable property of the complainant's society.

(b) The accused Nos. 2 to 17 entered into a criminal conspiracy for usurping immovable properties situated in Juhu. Vile Parle, Andheri, Santacruz, Khar, Bandra and Jogeshwari, Mumbai and floated various companies. Vide agreement dated 10th August 1990, the complainant had purchased the residential room premises being room No. 12 in Shri Ganpat Co-operative Housing Society Ltd. situated at CTS No. 390-A, 390 A/2 to 25 situated at Vile Parle (E) Mumbai. The complainant thereafter purchased another room being room No.14 and became a member and share holder of the society.

(c) The accused Nos.4 and 5 stopped the repair work of complainant's room premises on the ground that they have

purchased the property and they are the landlords of the property. The accused represented that, they had purchased property from accused Nos.18 to 30. The complainant learnt that, the accused Nos.2 to 17 had prevailed upon accused Nos.18 to 30 to join criminal conspiracy and prepared false documents and made representations before the Government authorities for usurping immovable property of the society. The accused Nos.18 to 30 submitted false Form of Application for membership of society to the office of Deputy Registrar for registration of Shri Ganpat Co-operative Housing Society.

(d) The accused Nos.2 to 17 made false written application to Deputy Registrar, Co-operative Housing Society K (East) Ward, Mumbai for registration of the society. The accused No.18 was put up to act as Chief Promoter. The accused Nos.18 to 30 prepared false documents like annexure-V, Statement-A and furnished the names of accused Nos.18 to 30 as a members of the society and submitted the same to Deputy Registrar, Co-operative Housing Society. Some of the accused were minor at the relevant time and some of them were not born.

(e) The accused prepared false document i.e. statement-C and submitted it to Deputy Registrar, Co-operative Housing Society. Accused also submitted false documents i.e. Form-X, affidavit dated

17th October 2007 executed by accused No.18 stating that, accused Nos.18 to 30 have purchased the plot of land in the year 1979 and submitted the same to the Deputy Registrar, Co-operative Housing Society. The accused made false declaration that they will transfer their right, title and interest in the land to the society after its registration. Although, the ownership of the property was already conveyed and transferred in the name of society on 10th April 2000. The name of society was already entered in revenue records and property card.

(f) The accused No.18 prepared false document i.e. Form-Y dated 17th April 2004 and submitted it to the Deputy Registrar, Co-operative Housing Society giving false details. The accused held the meeting dated 11th February 2007 and elected the accused No.18 as Chief Promoter of society and got prepared minutes of the meeting for submitting the same to the Deputy Registrar, Co-operative Housing Society. The accused open Bank account of the society by submitting false documents. They prepared resolution dated 1st November 2007 stating that, they decided to purchase the property from Ganpat Co-operative Housing Society. The accused prepared false documents i.e. Annexure-A, details of share certificate stating that, accused Nos.18 to 30 are occupying flats and holding share certificate in respect to the flats. The accused submitted xerox copy

of agreement dated 21st December 1979 which was executed between original landlord and the society members to the Deputy Registrar, Co-operative Housing Society knowing that they are submitting the copy of agreement with which they have no connection in any manner. The accused managed to obtain registration certificate dated 20th October 2007 from Deputy Registrar, Co-operative Housing Society by relying upon false document. The accused managed to get conveyed the property of the complainant's society in favour of accused No.1. The accused made false representation before the Joint Divisional Registrar, Co-operative Society stating that, the accused have purchased society plot from original owners of land. The accused made false representation to Minister for Co-operatives. The accused removed pages from the registered copy of deed of conveyance. The accused did not disclose that, the property is already declared as slum by the Government vide gazette dated 14th July 1977. The accused managed to obtain Index-II from the office of the Sub-Registrar, Andheri -II, Mumbai Suburban District and entered name of accused No.1 in property card.

3. Vide order dated 19th July 2013, the learned Magistrate issued directions under Section 156(3) of Cr.P.C. to register the crime and to make investigation. Accordingly, MECR No. 6 of 2013 was

registered with Vile Parle Police Station. After detailed investigation, police submitted final report stating that, no offence is committed by the accused and allegations relates to the rights of property which are purely of civil nature. Notice was issued to the complainant vide order dated 5th February 2014. The complainant filed Protest Petition on 24th February 2014. The learned Metropolitan Magistrate, 65th Court, Andheri, Mumbai vide order dated 1st July 2015 issued process against the accused Nos. 1 to 5 and 18 to 30 for offences punishable under Sections 420, 463, 465 and 468 read with 34 of the Indian Penal Code. The complaint was dismissed against the other accused on the ground that the complainant failed to show the role of other accused.

4. The Respondent Nos.1 to 12 in Criminal Revision Application No.226 of 2017 preferred Criminal Revision Application No.968 of 2015 and the Respondent Nos.2 and 3 in Criminal Revision Application No. 278 of 2017 preferred Criminal Revision Application No.878 of 2015 before the Court of Sessions, Grater Bombay challenging the order issuing process dated 1st July 2015.

5. Learned Additional Sessions Judge by separate orders dated 26th July 2016 allowed the Criminal Revision Application No. 968 of 2015 and Criminal Revision Application No. 878 of 2015 and set aside the order issuing process dated 1st July 2015 and dismissed

C.C. No.204/SW/2013.

6. The applicant is aggrieved by the aforesaid orders passed by learned Additional Sessions Judge and preferred these Revision Applications challenging the said orders.

7. Learned Advocate for the applicant in both the Revision Applications submitted that, the learned Sessions Judge has committed an error in setting aside the order issuing process. There was sufficient material before the Court of learned Magistrate for issuing process against the accused. No case is made out for setting aside the order of process. Prima facie case was made out for issuance of process and on the basis of material collected during the course of investigation, the learned Magistrate had issued process against the accused. The grounds urged by respondents were to be tested in evidence at the time of trial. Learned Magistrate had assigned cogent reason for issuance of process which did not require interference by the revisional Court. The offence is of serious nature. Accused were involved in fabricating the documents. The learned Magistrate took cognizance of those offences and issued the process for offences as stated herein above. Complainant is the owner of room Nos. 12 and 14. He has objection to sell the room to the accused. Although, the accused were members of society, they have no right to sell the property to accused Nos. 1 to 5. The accused had

entered into criminal conspiracy and committed the offences. Learned Sessions Judge failed to consider that the applicant is owner of room Nos.12 and 14 and he had never executed any agreement and deed of conveyance. The intention of accused was to usurp the immovable property of complainant. The accused submitted false and bogus form/application for membership of society. The accused were not owner nor had right in respect of land where applicants premises bearing room No.12 and 14 were situated. The applicant had not executed any writing or agreement in respect of room Nos. 12 and 14. The accused made false applications to Deputy Registrar Co-operative Housing Society. The accused prepared false documents and submitted the same to Deputy Registrar Co-operative Societies. On the basis of documents if age of some of the accused is calculated, they would be minor or unborn at relevant time. The accused had conspired and connived with each other in commission of offences. The accused managed to get registration certificate dated 20th October 2007 from Deputy Registrar Co-operative Housing Societies K-East Ward, Mumbai. The accused managed to get property conveyed to accused No.1. The accused made false representations to Joint Divisional Registrar Co-operative Societies that the accused Nos. 18 to 30 have purchased plot in 1970. There was no reason to set aside order issuing process.

8. Learned Advocate for respondent/accused in both the applications submitted that, the order passed by learned Sessions Judge does not require interference. Learned Sessions Judge has assigned detailed reasons for setting aside the order of process. The dispute is purely of civil nature. The police did not take cognizance of complaint of the applicant. He filed private complaint. Directions were issued. Learned Magistrate initiated directions under Section 156(3) of Cr.P.C. The report was submitted to the Court after completing investigation. The report clearly indicate that, the dispute is purely of civil nature. Suit in relation to the dispute is pending before the appropriate Court. The contention of respondents is that, by deed of conveyance dated 10th April 2000, Ganpat Co-operative Housing Society acquired plot of land, Hissa No. 14 of Survey No. 29 and part of City Survey No. 29 and 390A (pt) and 390A/2 to 25, at Shivaji Nagar Koldongri, Village, Ville Parle (E), Mumbai. The society accepted the offer of M/s. Samyak Holdings Pvt. Ltd. and resolved to sell property for Rs.32,50,000/-. Deed of conveyance was executed on 3rd November 2007. It was agreed by above party to provide premises to 13 members. Name of above concern was mutated in property card. The complainant filed complaints to various authorities. Police recorded statements of the office bearers of society and directors of accused No.1. The police

informed the complainant by letter dated 12th December 2008 that dispute is of civil nature. The complainant filed civil Suit No. 2841 of 2009 before City Civil Court at Dindoshi. The complainant filed notice of motion seeking interim injunction against respondent No.1 in Criminal Revision Application No.226 of 2017. The notice of motion was dismissed vide order dated 5th March 2010. The complainant by using forged certificate of society got the agreement dated 10th August 1990 in respect of room No.12 and agreement dated 23rd November 1992 in respect of room No.14 registered complaint was filed against the applicant. He was arrested. Charge-sheet was filed. The applicant made complaints to Deputy Registrar K-Ward. Complaints were not entertained. He filed application for deregistration of society. Vide order dated 16th July 2012 application was rejected. Applicant filed revision before Minister for co-operation. It was dismissed by order dated 9th January 2013. The said order was challenged by preferring Writ Petition No. 3895 of 2014. It was withdrawn with liberty to file fresh petition. The Applicant filed Writ Petition No. 3463 of 2015 in this Court. It was dismissed by order dated 29th April 2015. The applicant filed another complaint to Vile Parle Police Station. Statements were recorded. The applicant was informed by letter dated 25th April 2013 that dispute is of civil nature. The applicant filed private complaint.

Police were directed to conduct investigation under Section 156(3) of Cr.P.C. Police conducted investigation and submitted summary report before Court that grievance of complainant is of civil nature. The applicant filed protest petition. The learned Magistrate issued process. Applicant is not member of Ganpat Co-operative Society. The complaint is false.

9. I have perused the complaint, order issuing process, orders passed by Sessions Court in Revision Applications preferred by accused and the documents on record. The complainant filed private complaint. Learned Magistrate initially directed investigation under Section 156(3) of Cr.P.C. Report was submitted before the Court. After completing investigation it was opined that, dispute is purely of civil nature. However, learned Magistrate issued process against the accused/respondent for the aforesaid offences. Pursuant to order passed by learned Magistrate, the concerned police station has conducted thorough investigation. The report indicate that, the Investigating Officer has conducted detailed enquiry and it was found that, the dispute is of civil nature and the complainant was advised to initiate the proceeding before the Registrar Co-operative Society. Order issuing process was challenged before the Court of Sessions by the Respondent/accused. Learned Sessions Judge has dealt with the grounds of challenge and objection of complainant

and by assigning reasons allowed the Revision Applications preferred by accused. Learned Sessions Judge has considered the report of investigation submitted by police pursuant to direction of the learned Magistrate. The Investigating Officer has recorded statements of several witnesses and relied upon various documents to substantiate his conclusion that the dispute is between complainant and the accused relates to property and therefore, it is purely civil in nature. The Investigating Officer has stated in the report that, nothing was transpired in the investigation indicating offence at the hands of accused. Under the deed of conveyance dated 10th April 2000, the Chief Promotor, Bapu Punaji Chavan acquired plot of being Hissa No. 14 of Survey No. 9 CTS No. 390-A, 390 A/2 to 25 situated at Shivaji Nagar, Vile Parle (East), Mumbai alongwith structure standing thereon, it was declared as slum on 14th July 1977. The record further indicates that, the society vide its resolution dated 27th October 2007 agreed to sale the said land to the accused for sum of Rs.32,50,000/-. Accordingly, registered deed of conveyance dated 3rd November 2007 was executed and society sold the said property to the accused No.1 for sum of Rs.32,50,000/-. The accused No.1 agreed to give residential flats admeasuring 350 sq.ft. carpet area on ownership basis to all members of the society. The complainant filed a complaint with various authorities against the accused. During the

course of investigation of complaints, statement of office bearers of the society were recorded and vide letter dated 12th December 2018 it was informed that, the dispute is purely civil and the complainant make remedy in the civil Court. The complainant filed Civil Suit No. 2841 of 2009 in the City Civil Court at Dindoshi and filed notice of motion seeking interim injunction against the accused No.1. The suit No.2841 of 2009 was disposed of vide order dated 5th March 2010. Complaint was filed against the applicant herein alleging that the room Nos.12 and 14 were purchased by bogus and fabricated documents. The complainant was arrested and subsequently released on bail. Charge-sheet is filed in that case. The complainant submitted an application for deed of de-registration of the society under Section 21(A) of Maharashtra Co-operative Societies Act. The Divisional Joint Registrar rejected that application on 16th July 2012. The complainant filed Revision Application No.537 of 2012 against the said order before the Minister of Co-operation. The said Revision Application was dismissed by Order dated 9th January 2013. The complainant filed Writ Petition No.3895 of 2014 challenging the said order. The said Writ Petition was disposed of as withdrawn on 13th February 2015. The complainant again filed Writ Petition No. 3463 of 2015 which was dismissed by order dated 29th April 2015. Although, the police report was negative, learned Magistrate has not

assigned reason for discarding police report. Learned Sessions Judge while allowing the Revision Application preferred by respondent/accused considered all aspects including the report submitted by Police. Learned Sessions Judge has observed that, the Investigating Officer has recorded the statement of several witnesses and considered all complaints earlier filed by complainant of similar nature. The Investigation supported by statements of several witnesses and documents is discarded by the learned Magistrate without recording any reason. Learned Magistrate has relied upon the solitary fact that, complainant is the owner of Room No.12 and his consent was not obtained when the society sold the property to accused Nos.1 to 5. The complainant has alleged that, he is the owner of Room Nos.12 and 14. However, admittedly, the land beneath the structure possessed by the complainant is purchased by accused No.1 company. The rights of complainant to the structure possessed by him needs to be looked into by the Civil Court. The complainant has made wild allegations against the accused but not furnished particulars that when, how and in what circumstances forged and fabricated documents have been executed by members of the society in favour of accused No.1 company. The complainant has neither examined witnesses nor produced any evidence in support of his Protest Petition. Learned Magistrate has mechanically

passed the impugned order. It was further observed that, on perusal of final report and the impugned order it can be concluded that several complaints were filed by complainant making same allegations which were investigated into and adjudicated upon by the concerned authorities. The complainant has not challenged any of the said order and continued to file similar complaints repeatedly. The learned Magistrate has overlooked the detailed investigation made by police and ignored the final report, without recording any reason.

10. In the light of averments made in the complaint, investigation conducted by police, documents on record, I do not find that the learned Sessions Judge has committed any error in allowing the Revision Applications preferred by respondent/accused and setting aside the order issuing process. The applications are devoid of merits and deserves to be dismissed.

ORDER

Criminal Revision Application Nos. 226 of 2017 & 278 of 2017 are rejected and disposed of accordingly.

(PRAKASH D. NAIK, J.)