

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.551 OF 2023

Reality Finance & Leasing Pvt. Ltd. ... Petitioner

vs.

The State of Maharashtra and ors ... Respondents

Mr.A.P. Singh for the Petitioner.

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

CORAM : AMIT BORKAR, J.

DATED : MARCH 09, 2023

PC.:

1. The Petitioner is challenging order dated 26th September, 2022 passed by the Sessions Judge, Mumbai in Criminal Revision Application Nos.279 of 2020 and 280 of 2020.

2. The Petitioner is original complainant who had filed a private complaint alleging commission of offence punishable under Sections 406, 420 r/w 34 of the Indian Penal Code, 1860 (for short, 'IPC'). The accused persons are the Managing Committee Members of Co-operative Housing Society. The substance of complaint which according to the Petitioner constitutes offence is that the Managing Committee Members had charged non occupancy charges without authority of law. It

is also alleged that the Managing Committee Members were illegally charging water bills. It is also alleged that the Managing Committee was siphoning fund of Co-operative Society. The trial Court by order dated 20th December, 2019 issued process against the Managing Committee Members. The Managing Committee Members challenged the issuance of process by filing Criminal Revision No. 2279/SW/2016, the Revisional Court by the impugned order allowed the Revision Application and set aside the order of issuance of process. The said Revisional Court's orders are the subject matter of the present Petition.

3. Learned advocate for the Petitioner submitted that the learned advocate representing the Petitioner withdrawn his appearance, as a result, on the date of delivery of impugned order, the Petitioner was not represented. According to him, the impugned order is in breach of principle of natural justice. He submitted that charging of such a non occupancy bill, water bill constitutes the offence punishable under Section 406 and 420 read with Section 120B of the IPC. According to him, siphoning of fund by the Managing Committee Members is also an offence.

4. On perusal of the impugned order, it appears that the Petitioner was represented by the advocate. The advocate has also filed an undertaking. Once the Petitioner was represented by an advocate before the Revisional Court, in the absence of

advocate, It has caused a legal prejudiced to the Petitioner. The Petitioner is not entitled to raise such a ground of breach of principle of natural justice in absence of legal prejudiced, as it was duty of the Petitioner to appear before the Revisional Court. It is not the case of the Petitioner that he is not aware of the pendency of such a revision. The law of breach of natural justice has been settled by the Apex Court in the case of ***M/S Dharampal Satyapal Ltd vs Dy.Commr.Of Cen.Exc.& Ors***¹. The Apex Court has held that a mere breach of principle of natural justice in the absence of legal prejudice is not a ground for the Superior Court to interfere with the order passed by the lower authorities.

5. On merits, to constitute the offence punishable under Section 406 of IPC, it is necessary that there is criminal misappropriation of property kept in the custody of accused. To constitute the offence under Section 420 of IPC, dishonest intention in respect of transaction is essential ingredients. Therefore, the Revisional Court has rightly held that even if the averments in complaint are taken on its face value, it would not constitute offence under Section 406 or 420 of IPC. So far as the allegation of siphoning of fund by the Cooperative Society is concerned, it is well settled that the Members of Cooperative Society is entitled to move the statutory authority under the provisions of the Maharashtra Cooperative Societies Act, 1960 (for short, 'Societies Act, 1960'). The authority under the Act

1 Criminal Appeal 4458-4459 of 2015 – 14 May, 2015

on being satisfied, *prima facie*, about substance in complaint can always initiate proceedings in the nature of special audit under Section 81(5) of the Societies Act, 1960, however, subject to limitation as provided under Section 81 of the Societies Act, 1960.

6. Having gone through the Revision Applications, in my opinion, the averments in complaint do not constitute the offence as alleged against the accused persons. The Revisional Court has therefore rightly allowed the Revision Applications of the Members of the Cooperative Society.

7. In my opinion, there is no error of jurisdiction while passing the impugned order by the Revisional Court which would result into miscarriage of justice. Hence, Petition stands dismissed. No costs.

(AMIT BORKAR, J.)