

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION (APPLN) NO. 1475 OF 2010**

1. Suresh Subrai Vaingankar
Aged about 83 years. Occ. Retired

2. Smt. Sunita Suresh Vaingankar
Aged about 76 years, Occ. Retired,
Presently residing at 11/34,
Vishweshwari CHS Ltd. Sarswati
Baug, Jogeshwari (East), Mumbai

3. Smt. Pallavi Kaushtubh Jaykar
Aged about 53 years, Occ. Service
Res. At 12, Jeevan Apsara, 147-A
Sr. Francis Road, Vile-Parle (East),
Mumbai-400 056.

4. Smt. Priti Prabhakar Vaingankar
(Dead) 12, Jeevan Apsara, 147-A,
St. Francis Road, Vile-Parle (East),
Mumbai-400 056.

... Applicants/Accused

V/s.

1. The State of Maharashtra
Through Sahunagar Police Station,
To be served through Public
Prosecutor, High Court, Bombay

2. Smt. Padmini Shankar Satardekar
(Dead) Res. At. Sahunagar Colony,
G-18, Room No.6, Mahim (East),
Mumbai

... Respondents

Mr. Karan Mehta a/w Ashwin Pande, Punit Vyas, Shubham Dudwadkar,
Ayesha Khatri i/b Karan Mehta & Associates for the Applicants/Accused.
Ms. Mahalakshmi Ganpathy, APP for Respondent No.1-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 12th DECEMBER, 2023

JUDGMENT (Per A.S. Gadkari, J.)

1) The Applicants/Accused have filed present Application for quashing C.C. No.1200/PW/2010 pending on the file of Metropolitan Magistrate, 12th Court, Bandra, Mumbai, arising out of C.R.No.30 of 2020 dated 15th February, 2010 registered at Shahunagar Police Station, Mahim under Sections 452, 323, 504, 427, 34 of the Indian Penal Code.

2) Heard learned counsel for the Applicants and learned APP for Respondent No.1-State. Perused the record.

3) Record indicates that, by an Order dated 24th January, 2011, the Application was Admitted and liberty was granted to the Applicants to seek interim relief of stay to the proceedings as chargesheet was filed.

4) Record indicates that, as Applicant No.4 and Respondent No.2 were reported to be dead, the Applicants carried out necessary amendment in pursuance of the Order passed by this Court dated 28th November 2023 and deleted the said two persons from the cause title of the Application. It be noted here that, Respondent No.2 is the first informant, who has lodged the present crime against the Applicants.

5) Record reveals that, Respondent No.2 was the elder sister of Applicant No.1. Applicant No.2 is the wife of Applicant No.1. Applicant

No.3 is niece of Applicant No.11475 and daughter of original Applicant No.4.

5.1) The dispute in question has arisen out of occupation of Room No.6, situated on the 2nd Floor, Bldg. No. G-18 at Shahunagar, Mahim (East), Mumbai. Record indicates that, the said room was allotted to Applicant Nos.1 and 2 as an alternative permanent accommodation on tenancy basis. Applicant Nos.1 and 2 had allowed Respondent No.2 to occupy the said room in the year 2005, as residential premises of Respondent No.2 situated at Chembur, Mumbai, was required to be vacated by her for the purpose of redevelopment of the said building. After the Applicants permitted Respondent No.2 to occupy the said room, she thereafter called her married daughter and son-in-law to reside therein. Subsequently, despite repeated requests by the Applicants, Respondent No.2 was not willing to vacate the said room. There used to be bickering between Applicant Nos.1 & 2 and Respondent No.2 over the issue of vacating the said room by Respondent No.2, her daughter and son-in-law. The said bickering ultimately gave rise in filing the present crime by Respondent No.2.

5.2) It is alleged in the First Information Report that, on 15th February, 2010, at about 11.00 a.m, when Respondent No.2 was inside the said room, all the Applicants came there and knocked the door. As Respondent No.2 did not open the said door, the Applicants broke upon the said door, committed trespass, abused and assaulted Respondent No.2. In this brief premise, the present crime is registered.

6) As noted earlier, it is an admitted fact on record that, Applicant No.1 was/is the lawful tenant of the said premises and he had permitted Respondent No.2 to reside therein by extending necessary help to her, being his elder sister. It appears to us that, being ungrateful to the timely help advanced Applicant No.1, Respondent No.2 with a view to grab the suit property, has lodged the present crime. The allegations mentioned in the penultimate paragraph of the first information report, according to us, appears to be a fanciful and highly exaggerated version of the facts. On the date of lodgement of the crime, Applicant No.1 was aged about 69 years and Applicant No.2 was aged 63 years. In this admitted background, it is very difficult for us to accept the contention of Respondent No.2 that, Applicant Nos.1 and 2 forcefully broke open the door of the said suit premises, wherein allegedly Respondent No.2 was the occupant. It clearly appears from the record that the lodgement of the present crime by Respondent No.2, is sheer abuse of process of law and it was lodged only to either harass the Applicants or to prevent them from resorting to any legal action. It further appears that, it was lodged to usurp the said property without adopting due process of law.

7) In view of the above, according to us, the continuation of the proceedings arising out the crime registered by Respondent No.2, will be sheer abuse of process of law and is required to be quashed and set aside.

- 8) Accordingly we quash and set aside C.C. No.1200/PW/2010 pending on the file of Metropolitan Magistrate, 12th Court, Bandra, Mumbai, arising out of C.R.No.30 of 2020 dated 15th February, 2010 registered at Shanunagar Police Station, Mahim under Sections 452, 323, 504, 427, 34 of the Indian Penal Code.
- 9) Application is allowed in aforesaid terms.
- 10) Rule is accordingly made absolute.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

RAJESH
VASANT
CHITTEWAN

Digitally signed by
RAJESH VASANT
CHITTEWAN
Date: 2023.12.20
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