

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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CRIMINAL APPLICATION NO.898 OF 2021

Suresh Vinayak Kulkarni & Ors.

..Applicants

Versus

Inspector of Police, Nerul Police Station

Navi Mumbai, District Thane & Ors.

..Respondents

Mr. Prashant G. Karande, for the Applicants.

Mr. J. P. Yagnik, APP for the Respondent/State.

Mr. Shivaji Masal, for the Respondent No.2.

CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.

DATE : 10th JULY, 2023

PC.

1. Heard.

2. Applicants are seeking quashing of the FIR being Crime No.271 of 2021 registered on 30th July, 2021 for an offence punishable under Sections 443 and 453 of the IPC in which they are already charge-sheeted.

3. The genesis of the offence is, based on the right claimed by the respondent No.2, who claimed that he has a development agreement with father-in-law of Applicant No.1. Applicant Nos.2 and 3 are the daughter and son-in-law of Applicant No.1 and it is the case of the applicants that they have succeeded subject matter of

the property in the offence by virtue of the son-in-law of deceased owner, namely Dwarkanath Ramchandra Kotnis.

4. The case of the prosecution against the applicants is that Dwarkanath Ramchandra Kotnis died in the year 1995, however, he entered into a development agreement on 12th May, 1994 in relation to the immovable property located at Sector-17, Nerul, Navi Mumbai. The agreement provides for the development to be carried out by respondent No.2 and after such development, first and second floor of the building was to be handed over to deceased Dwarkanath Ramchandra Kotnis. It is the case of the respondent No.2 that since death of the owner the applicants failed to execute the title-deed in relation to the ground floor and land appurtenant thereto on the front and rear side. A suit for specific performance and injunction being RCS No.367 of 2014 came to be initiated which is informed to be pending adjudication at the final stage. It is claimed that during pendency of the aforesaid suit, the applicants trespassed into the house on 29th July, 2021, thereby entering from terrace of the adjoining building on the terrace of the developed property and as such, committed offence in question.

5. The offence is made punishable under Sections 443 and 453 of the IPC i.e. lurking house trespass and punishment for lurking house trespass or house breaking. Submissions of counsel for the applicants are, from the investigation carried out as reflected in the charge-sheet, satisfaction of ingredients of offence punishable

under Section 453 of IPC cannot be inferred as the applicants cannot be said to have committed lurking house trespass as defined under Section 443 of the IPC. So as to substantiate said contention, our attention is invited to the observations made by the Civil Court who has seized with the matter in relation to the grant of specific performance wherein application Exh.5 for grant of temporary injunction came to be allowed vide order dated 12th April, 2018 passed by Civil Judge Senior Division, Thane and judgment and order dated 29th February, 2020 passed by District Judge-10, Thane, in Misc. Civil Appeal No.47 of 2019, so also, the order passed by this Court in Writ Petition Stamp No.96119 of 2020 on 22nd March, 2021.

6. The contentions are that the relationship between the parties is not in dispute as is claimed by counsel for the applicants from the very language used in the FIR and other material collected during the investigation as reflected in the charge-sheet. He would as such urge that for attracting provisions of Section 443 of IPC i.e. lurking house trespass, it is necessary to satisfy that the complainant should have right to exclude or eject the trespasser from the building is in question. The fact remains that the case of the complainant/respondent No.2 is in relation to the trespass carried out by the applicants on the terrace of first and second floor. The very development agreement, so also, the contents in the FIR and investigation papers reflect that the respondent No.2 has no right to evict the applicants from the first and second floor as the very

genesis of the case of the respondent No.2 is based on the development agreement and such development agreement gives right to the complainant only to the extent of ground floor. The issue whether the respondent No.2/complainant has right on the open space on the ground floor is an issue looked into by the competent Court and same shall be adjudicated independently without being influenced by the findings recorded herein-above. Even if case of the prosecution as reflected in the FIR and charge-sheet is appreciated, it cannot be said that the same satisfies the very ingredients of Section 443 of the IPC as is discussed herein-above.

7. In this view of the matter, in our opinion, the prosecution of the applicants for offence punishable under Sections 443 and 453 of the IPC is not sustainable, as *prima-facie* it can be inferred that no commission of offence as alleged can be inferred from the contents of the FIR and investigation carried out.

8. The application as such stands allowed. The prosecution initiated against the applicants vide FIR No.271 registered with Nerul Police Station for the offence punishable under Sections 443 and 453 of the IPC is hereby quashed and set aside.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]