



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APPA) NO.1047/2022

IN

CRIMINAL APPEAL ST.NO.8496/2022

Siddheshwar Panchappa Hawa

..VS..

Panchvati Builders, thr.its Proprietor Sunil s/o Vishambarnath Tiwari

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Ms Payal Kaware, Advocate h/f Shri S.S.Dhengale, Counsel for the
Applicant.

Shri K.D.Shukla, Counsel for the Non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 10/08/2023

PRONOUNCED ON : 31/08/2023

1. By this application, the applicant seeks leave to file an appeal against judgment and order dated 21.9.2022 passed by learned Chief Judicial Magistrate, Nagpur in Regular Criminal Case No.1964/2018 whereby the non-applicant (accused) was acquitted of offence punishable under Section 13 of the Maharashtra Ownership Flat Act, 1963 (the said Act).

2. The applicant is original complainant. He filed a complaint under Section 13 of the said Act. In the said complaint, he alleged that the accused is a professional builder and runs firm under name and style as "Panchvati Builders". The accused constructed building namely "Suman Castle" on land bearing plot No.27, khasra No.425, city survey No.12, sheet No.158 of mouza

Pandhrabodi situated at Hindustan Colony, Amravati Road. While constructing and developing the said building, the accused committed various illegalities and irregularities and thereby committed the offence punishable under Section 13 of the said Act. The accused has given possession of flat No.203-A & B on 9.1.2003 to the complainant. The accused was supposed to take necessary steps after giving the possession to the flat owners for forming a cooperative society which he has not fulfilled. The complainant approached the Registrar of the Cooperative Societies and the concerned Registrar issued notices to the accused to show cause. It is further contention of the complainant that the accused who is promoter was under obligation to obtain completion certificate. However, the accused has not complied with the same. Thus, the accused has not complied with the provisions of the said Act.

3. The trial court, after recording evidence, held that the complaint is not within the period of limitation as it is filed after seventeen years and acquitted the accused. Being aggrieved and dissatisfied with the same, the application is preferred seeking leave to file the appeal against the said order of acquittal.

4. Heard Advocate Ms Payal Kaware h/f learned counsel Shri S.S.Dhengale for the complainant and learned counsel Shri

K.D.Shukla for the accused.

5. Learned counsel for the complainant submitted that there was continuous cause of action. As the accused has not complied with the provisions of the said Act to form the cooperative society, there are other requirements which are also not complied with. There was subsequent agreement dated 22.10.2022 and in view of the said agreement, there was a continuous cause of action which the trial court has not taken into consideration. Thus, the complainant has various arguable points and hence the leave be granted.

6. Learned counsel Shri K.D.Shukla for the accused vehemently submitted that even if it is considered that there was a subsequent agreement, the said agreement was in the year 2002 and the complaint was filed in the year 2018. The sale deed was also executed in the year 2005. The complainant has taken the possession and not put forth his grievances. Thus, nothing is on record to show that there was continuous cause of action. The trial court has rightly considered the issue. Hence, the application for leave deserves to be rejected.

7. Having heard both the sides and scrutinized the record, it reveals that the trial court has considered Sections 467 and 468 of the Code of Criminal Procedure which deal with the law

of limitation. As per the said provisions, especially Section 468 (2) (c), period of limitation shall be three years if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years.

8. In the present case, the offence alleged under Section 13 of the said Act is also punishable with three years. Perusal of the complaint shows that the offence is made out on 16.1.1990 and, thereafter, the subsequent agreement was in the year 2002 and the sale deed was executed in the year 2005. After going through the record and proceeding, it reveals that the complaint is filed after seventeen years. There is nothing on record expressing from the agreements that there was continuous cause of action. The punishment provided under Section 13 of the said Act is only three years and in view of Section 468, the complaint should be filed within three years. Thus, the trial court rightly considered that the complaint is barred by limitation and rightly acquitted the accused. No case is made out to grant the leave to prefer the appeal.

9. The criminal application is **rejected** and disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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