

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

CRIMINAL REVISION APPLICATION NO. 261 OF 2017

1. Naren Pravin Sanghvi ...Applicant

Versus

1. Vikram Kishankumar Khanna

2. Mahesh Khmji Haria

3. State of Maharashtra ...Respondents

None for the Applicant.

Mr.H.J.Dedhia - APP for Respondent No.3 - State.

CORAM : S. M. MODAK, J.

DATE : 24th JANUARY 2024

P. C. :-

1. In this Revision Application, the order passed by the Additional Sessions Judge - Greater Mumbai thereby setting aside the order of issue process dated 17th August, 2015 passed by the Court of Metropolitan Magistrate, 51st Court, Kurla was challenged. The nature of the orders is as follows :-

- (a) Vide order dated 17th August, 2015, learned trial Magistrate was pleased to issue a process against Respondent No.1 - Vikram Khanna - Secretary and Respondent No.2 - Mahesh Haria - Treasurer of Sunrays Co-operative Housing Society. (whereas, the complaint was dismissed against one Vanitaben Dedia).

(b) Whereas, as per the order dated 30th January, 2017 passed by the Court of Additional Sessions, this order of issuance of process is set aside.

2. So, that is how the Complainant has filed this Revision Application. He has sought permission to argue his case. However, learned Central Project Co-ordinator has not found him fit. In view of that, in fact, the Applicant ought to have taken legal assistance but he has not taken the same. Revision is also not listed for so many years. On 11th January, 2024, it was made clear that if no one will appear today, Revision will be dismissed.

3. In order to ascertain the legality of the impugned order, I have perused the record. Following facts emerges :-

- (a) FIR is registered at Sion Police Station on 2nd October, 2014 for the offences punishable under Sections 341, 504 read with 34 of Indian Penal Code, 1860 ["IPC"] against two persons. It is in respect of not allowing the Applicant to park his car. (Page No.26).
- (b) Final report under Section 173 of the Code of Criminal Procedure, 1973 [Cr.P.C."] for issuance of "B" Summary was submitted by the Police. Applicant filed Protest Petition.
- (c) Learned Metropolitan Magistrate as per the order dated 13th July, 2015 was pleased not to accept "B" Summary Report and directed the First-Informant to adduce evidence. (Page No.18).
- (d) After evidence was adduced, learned Magistrate issued a process on 17th August, 2015 (Page No.19).

4. On this background, learned Additional Sessions Judge set aside the order of issue process. I have read that order. After going through the evidence, learned Additional Sessions Judge gave following observations :-

- (a) The Applicant in his evidence in Para Nos.1 to 3 has explained the nature of the dispute regarding maintenance charges.
- (b) The Applicant has challenged the minutes of Annual General Meeting.
- (c) The office bearers have given him 48 hours notice and it is replied.
- (d) Complaint is filed by the Applicant before the Assistant Registrar thereby protesting about an illegal demand.

5. On this background, treasurer Haria has not allowed the Applicant to park his car as he has not paid the charges.

6. On this background, learned Additional Sessions Judge observed that *"it was dispute over car parking and not over the restraining the respondent to enter inside the society premises"*. (Para 11). Further it is observed *"it cannot be said that the testimony of respondent is sufficient enough to offer any ground to proceed against the applicants for alleged wrongful restraint...."*. In nutshell, learned Additional Sessions Judge has observed that an ingredient of Section 341 of IPC is absent.

7. I do not find any illegality in the said order. At the stage of issuance of process, Court has to take a *prima facie* look. In fact, the Applicant was restrained because he has not paid the parking charges. No offence is disclosed. No interference is warranted. Hence, Revision is dismissed.

[S. M. MODAK, J.]