

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

**CRIMINAL APPLICATION NO.451 OF 2023**

RAOSAHEB MURLIDHAR AHIRE AND ANR. ..APPLICANTS  
VS.

THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Adv. Ketan Arun Dhavle for the applicants.  
Ms. S. D. Shinde, APP for the State.  
Adv. Wasim R. Khan for respondent No.2.

**CORAM : M. S. KARNIK, J.**

**DATE : JANUARY 10, 2024**

**ORAL JUDGMENT :**

**1.** Heard learned counsel for the applicants who is appointed through legal aid to represent the applicants. I have heard learned APP for respondent No.1 and learned counsel for respondent No.2.

**2.** This application challenges an order passed below Exhibit 2 issuing process by the Metropolitan Magistrate, 51<sup>st</sup> Court, Kurla, Mumbai dated 23.03.2016 under Sections 323, 504, 506(ii), 427 read with 34 of the Indian Penal Code. The order reads thus :-

"This is the Private complaint for the offence Punishable U/ sec 420, 323, 504, 506(ii) r/w 34 of I.P.C. perused the

complaint and evidence of the complainant. I have called the police report. Police has filed the report that it is the civil dispute between the parties. However; I am not satisfied with the conclusion drawn by the inquiry officer. The evidence of the complainant clearly shows that accused have committed an offence punishable u/sec. 323, 504, 506(ii), 427 read with section 34 of I.P.C. There is sufficient evidence to proceed against them. Hence, issue process for the said offence on payment of process fee. Returnable on 30-06-2016."

**3.** I have perused the complaint made by the present respondent No.2 against the accused No.1 and the present applicants who are accused Nos.2 and 3. Briefly stated, it is the case of the complainant-respondent No.2 that in the society of which the accused No.1 projected himself to be the Chairman, respondent No.2 purchased a garage. The respondent No.2 required a no objection certificate for electricity meter connection, water connection and for completing other formalities for transfer of garage in his name. It is the allegation that sometime on 20.08.2013 the accused Nos.1 and 2 approached the complainant and both demanded Rs.10,000/- for giving such no objection certificate. Later on a demand was made by the accused for sum of Rs.2,00,000/- for the building repairing fund from the complainant and his son. The accused Nos.1 and 2

informed the complainant that the no objection certificate will be given to him only upon the payment of Rs.2,00,000/-. Accordingly, on 29.08.2013 the said amount was paid by the complainant to the accused Nos.1 and 2 in cash. The accused failed to issue the no objection certificate despite accepting the payment and therefore the complainant started demanding refund of the amount. Instead of returning the amount, accused threatened the complainant with dire consequences and often quarreled with him. It is further submitted that accused No.3 who is the wife of the accused No.2 started quarreling with the complainant and his family members. The complainant was thus left with no alternative but to file the complaint under the aforesaid sections against the accused before the trial Court.

**4.** I have heard Mr. Dhavle, learned counsel who was appointed through legal aid to represent the applicants. Mr. Dhavle submitted that the order issuing process is erroneous as the dispute is more of a civil nature. Mr. Dhavle though denied the accused having received a

sum of Rs.2,00,000/-, nonetheless submitted that allegations are mainly against the accused No.1 and not against the present applicants. It is further submitted that the proceedings are pending since the year 2016 before the trial Court and the complaint initiated is nothing but an abuse of the process of the Court with an attempt made to falsely implicate the applicants and harass them. It is submitted that having regard to the materials on record the trial Court was not justified in issuing the process.

**5.** Learned APP as well as learned counsel for respondent No.2 argued in support of the process issued by the trial Court. My attention is invited to the complaint. Learned counsel for respondent No.2 submitted that the accusations in the complaint are specific against the accused which satisfy the ingredients of the alleged offence. It is submitted that though the society was not registered, the accused Nos.1 and 2 projected themselves to be the committee members of the said society and on the pretext of collecting building repairing fund, asked the complainant to pay a sum of Rs.2,00,000/- for issuance of the requisite no objection

certificate. It is submitted that the accused threatened the complainant when a request was made for the no objection certificate or in the alternative for the refund of the amount.

**6.** I have heard learned counsel. I have perused the materials on record. A reading of the allegations made in the complaint reveal that for the purpose of building repairing fund and issuance of the no objection certificate a sum of Rs.2,00,000/- was paid by the complainant to the accused Nos.1 and 2. So far as the allegation against the accused No.3 is concerned, it is alleged that she raised a quarrel with the family members of the complainant over the issue of refund of the amount of Rs.2,00,000/-. There are receipts on record to indicate that a sum of Rs.1,85,000/- was paid by the accused to the complainant. However, the signatures on the said receipts are disputed by the complainant. At this stage it is not possible for me to rely upon such receipts and express an opinion.

**7.** It is however necessary to notice some uncontroverted materials, a mention of which obviously does not find place in the complaint. It is pertinent to note that the complainant

through his advocate had issued a notice dated 18.12.2013 to the accused No.1. In the said notice it was mentioned that the accused No.1 was working as the Chairman of the said society which is not registered and the legal formalities of the society are not completed till today. It is further mentioned in the said notice that the accused No.1 being the Chairman of the society demanded a sum of Rs.2,00,000/- from the respondent No.2 for granting permission to stay and reside in the room which he purchased and for proving water tap, electricity and drainage line. It is mentioned in the notice that a sum of Rs.2,00,000/- as per the demand of the accused No.1 was handed over by the complainant on 25.08.2013 to the accused No.1. If the contents of such a notice dated 18.12.2013 is perused, it is seen that the entire grievance is against the accused No.1. In the said notice a demand is made that the accused No.1 should keep his promise or return back the sum of Rs.2,00,00/- to the complainant within 7 days from the date of receipt of this notice. Thus there is no reference in the notice to any demand or

acceptance for and on behalf of the present applicants.

**8.** Interestingly, in the complaint filed before the trial Court on 08.01.2014, it is alleged that it is the accused Nos.1 and 2 who demanded a sum of Rs.2,00,000/- and accordingly the said amount was paid to the accused Nos.1 and 2. Accused No.3 who is the wife of the accused No.2 is implicated on the allegation that she was raising a quarrel and threatening the family members of the complainant. The allegations against the applicants therefore appear to be an afterthought and there is every possibility of a false implication.

**9.** Taking an overall view of the matter, in my opinion, issuance of the process against the present applicants-original accused Nos.2 and 3 is an abuse of the process of the Court which cannot be permitted. It is further seen from the complaint that the complainant essentially wanted refund of his money. I find substance in the contention of learned counsel for the applicants that the criminal proceedings are resorted to against the applicants for redressing a grievance of a civil in nature. The application

therefore deserves to be allowed and is accordingly allowed in terms of prayer clause (a). It is for the trial Court now to pass consequential orders as regard the applicants.

**10.** Criminal Application is disposed of.

**(M. S. KARNIK, J.)**