

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO. 107 OF 2023

Mr Yunus Razzak Shaikh ...Applicant
vs.
The State of Maharashtra and Anr. ...Respondents

Mr. Ashish P. Agarkar - Advocate for the Applicant
Mr. Amin Solkar - SPP for the Respondent-State

ALONGWITH
REVISION APPLICATION NO. 66 OF 2023

Irfan Husain Miyan Qazi ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Majeed Memon a/w Mr. Taoish Jain a/w Mr. Khalil Girkar i/by Mr.
Kishan Choudhari - Advocate for the Applicant
Mr. Amin Solkar - SPP for the Respondent-State

ALONGWITH
REVISION APPLICATION NO. 144 OF 2024

Bahubali Tatyaso Dhamane ...Applicant
vs.
The State of Maharashtra and Anr. ...Respondents

Mr. Sultan Khan a/w Mr. Bhavesh Ameta a/w Ms. Khyati Shah i/by
Mr. S. M. M. Owais T. Jahagirdar - Advocate for the Applicant
Mr. Amin Solkar - SPP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 21st MARCH 2024

P. C. :-

1. At the beginning itself learned Advocate Shri Majeed Memon clarified one issue about options available to the trial Magistrate. He referred the following two provisions :-

(i) Provision under Section 216 of the Criminal Procedure Code relating to the alteration of the charge, at any time prior to the judgment is pronounced.

(ii) The provisions of the Section 323 of the Criminal Procedure Code empowering the trial Magistrate to send the case to the Court of the Sessions if after recording of the evidence, he finds it is exclusively triable by the Court of the Sessions.

He referred to these two provisions in support of his earlier submissions. They are :

(a) for discharging his client – Irfan Hussain Miyan Qazi, in Criminal Revision Application No. 66 of 2023 from all the offences and

(b) there is an option available to transfer the case to the Court of

JMFC for trial of relevant offences.

2. According to him, even if this case is transferred to the trial Magistrate on the basis of the observations of this Court, still there will not be any prejudice to the prosecution, because option under Section 323 of the Criminal Procedure Code still be available.

3. Whereas learned Advocate Shri Solkar, SPP for the State read over the provisions of the Section 299 of the Indian Penal Code while opposing the revisions. He made following submissions:-

- (i) Even though plans sanctioned for ground+four building, building upto 5th floor was constructed.
- (ii) Plinth was not erected till hard rock is found beneath the land.
- (iii) Architect-Gaurav Shah (A-2), RCC Consultant Bhaubhali Dhamane (A-3) and Vivek Dongare (A-7)- Interior Designer-co-accused worked under one roof by name Vertical Architect and all of them have worked together in different projects.
- (iv) Applicant-Dhamane also worked with Kohinoor Developer owned by accused-Farooque Qazi (Accused No. 1-Developer).
- (v) There is statement of the supervisor Marathe appointed by the Applicant Dhamane and he has visited the site and he was not

happy about the plinth work, because it is not as per the plan.

(vi) The file with Mahad Municipal Council went missing after the building collapsed. So Police cannot seize any of the documents.

(v) There are statements of the concerned employees :-

- (i) Chief Executive Officer – Sanjay Shinde who has sanctioned the building plan on 11/05/2011 (at page no. 7 of the additional documents given by learned Advocate Shri Solkar). Though he is not aware about further applications in respect of granting permission to erect the plinth.
- (ii) Statement of Devendra Mokhandikar, dated 01/11/2020 (at page no. 9). He was City Engineer and he visited the site and gave NOC on that basis, the building permission was granted.
- (iii) the CEO one Mr. Zinzad, City Engineer and one Mr. Dighe who were instrumental in granting the occupancy certificate. They were made as an accused persons and against them sanction was refused by the Government.
- (iv) He read over the statement of one Mannan Karbelkar. He

is flat purchaser. His mother and brother have doubted about use of the gypsum and he has said about collection of an amount by the Applicant-Yunus Shaikh (CRA No. 107 of 2023) towards the maintenance and about partnership of Yunus Shaikh and builder Farooque Qazi. He has further stated about negligence by the Applicant Irfan Qazi in CRA No. 66 of 2023 to undo the repairs.

- (v) He has also read over the summary of the conclusion given by V.J.T.I. dated 17/05/2021 on the point test carried out at site and done analysis.
 - (a) As about concrete RCC samples being inconsistent and poor.
 - (b) Quality of the concrete being doubtful.
 - (c) Compressive strength of the concrete is less than its design strength.
 - (d) Footing are not rested on equivalent stratification.

4. Matters be kept on 28th March 2024 at 2.30 p.m. for further arguments.

[S. M. MODAK, J.]