IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.683 OF 2006

Kavita Vinaykumar Munnot
Age : 41 years, Occ. : Business & Housewife,
R/o Vimal Bungalow, Rasani Nagar,
Savedi, Ahmednagar. ... Petitioner
(Orig. Complainant)

VERSUS

1. The State of Maharashtra

2. Makarand S/o Madhav Kulkarni
Age : 38 years, Occ.: Builder,
Proprietor of Mark Construction,
R/o Parekh Building, Mahajan Lane,
Ahmednagar.

3. Sau. Veena Chandramohan Kandepalli
Age : 47 years, Occ. : Service.

4. Vishwanth S/o Kacharu Kharat
Age : 40 years, Occ.: Service.

Both Respondent Nos. 3 and 4
R/o 'Indira Chambers',
Flat Nos. 101, 102, 202, respectively,
Bajapatti, Ahmednagar. ... Respondents

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Mr. Pritam P. Jadhav, Advocate for Petitioner.
Mrs. A. S. Deshmukh, APP for Respondent No.1 – State.
Mr. Sudarshan J. Salunke, Advocate for Respondent No.2.
Mrs. C. S. Deshmukh, Advocate for Respondent Nos.3 and 4.

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CORAM : HITEN S. VENEGAVKAR, J.

DATED : 22th OCTOBER, 2026

JUDGMENT :

1. The petitioner, who is the original complainant, challenges the judgment and order dated 7th October, 2006 passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Revision Application No.95 of 2006. By that judgment, the Revisional Court set aside the order issuing process in R.T.C. No.84 of 2006 and directed that the proceedings be dropped. The petitioner seeks restoration of the criminal case.

2. At the outset, the intervening procedural history requires mention. This petition was earlier allowed on 5th September, 2024 and the matter was remitted to the learned Chief Judicial Magistrate on the understanding that no order issuing process had been passed. Subsequently, the order made on Exhibit-1 of the charge-sheet was brought to the notice of this Court. By order dated 19th November, 2025 in Criminal Application No.5014 of 2024, the judgment dated 5th September, 2024 was recalled and the petition was reopened. The present consideration is, therefore, on the merits of the challenge to the revisional judgment.

3. The petitioner states that her husband was a tenant in the old property at Bagadpatti, Ahmednagar, which was

redeveloped into a building known as Indira Chambers. Respondent No.2 undertook the development as the constituted attorney of the owners. According to the petitioner, she and her husband booked two flats on 27th July, 1998. Following an alteration in the numbering, Flat No.002 was allotted to her and Flat No.001 to her husband. She states that she paid the agreed consideration and other charges during the year 1998 and 1999, but respondent No.2 neither executed a registered agreement for sale nor supplied the necessary documents.

4. The petitioner further states that possession of her flat was delivered on 23rd March, 2001 and that a sale deed was subsequently executed on 3rd August, 2002. According to her, she was called to the registration office at short notice and signed the document on the assurance that it was prepared in accordance with law. On reading it thereafter, she noticed that clause 8 reserved the use of the terrace for the holders of Flat Nos.101, 102 and 202. A corresponding provision appeared in the registered declaration of 1999. She alleges that this restriction had not been disclosed when she booked the flat and paid the consideration. On her objection, respondent No.2 allegedly promised to execute a correction deed and assured her that her access to the terrace would not be obstructed.

5. The petitioner states that when she visited the flat in November 2004, she noticed walls erected on the terrace to demarcate the portions claimed by the other accused. She alleges that those accused prevented her and her family members from entering that part of the terrace. She also made multiple allegations that funds collected for maintenance and common expenses of society were used for those works, that proper accounts and receipts were not maintained, and that the promoter had failed to complete the formalities relating to the organisation of the apartment owners and intimation to the Registrar.

6. On these allegations, the petitioner instituted Criminal Complaint No.143 of 2005 before the learned Chief Judicial Magistrate on 28th April, 2005. The matter was referred for investigation under Section 156(3) of the Code of Criminal Procedure. The police registered the case on 6th May, 2005 and subsequently submitted a charge-sheet. The learned Magistrate directed registration of R.T.C. No.84 of 2006 and issuance of process. Respondent Nos.2 to 4 challenged that order in revision, which was allowed by the judgment under consideration.

7. Learned Advocate for the petitioner submits that the

Revisional Court exceeded its jurisdiction by examining the material as if the case had reached trial. He submits that the complaint and the charge-sheet disclosed sufficient grounds to proceed against all the accused persons. In particular, he relies upon Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as "MOFA"), and submits that acceptance of the consideration without executing the required agreement attracted Section 13 of the Act. According to him, execution of a sale deed at a later stage did not remove that contravention of law.

8. Learned Advocate further submits that the petitioner could not have learnt of the restriction upon terrace use merely by visiting the construction site. He submits that the promoter withheld the documents and subsequently failed to honour the assurance of rectification. He relies upon ***Ramagauri Keshvlal Virani v. Walkeshwar Triveni Co-operative Housing Society Ltd.***, ***1999 SCC OnLine Bom 382*** and ***Nahalchand Laloochand Private Limited v. Panchali Co-operative Housing Society Limited***, ***(2010) 9 SCC 536***, in support of his submission concerning common areas. On limitation, he submits that the sale deed was executed on 3rd August, 2002 and that the complaint instituted in April 2005 was

within three years. He also relies upon the allegation of continuing contraventions.

9. The argument of the accused, as recorded in the revisional judgment and also orally argued by the learned Advocate for accused, is that the investigation did not substantiate the alleged diversion of maintenance funds, that the declaration and the sale deed expressly recorded the disputed terrace arrangement, and that the controversy concerned the extent of the rights acquired under those documents. They relied upon the statements of other apartment owners concerning collection and use of maintenance contributions and upon the response obtained from the municipal authority concerning the construction. They also raised the objection of limitation in respect of the alleged statutory defaults.

10. An order issuing process is amenable to revisional jurisdiction. The availability of an application for discharge does not oblige an accused to undergo further proceedings before questioning the legality of the summoning order. The position is settled by ***Urmila Devi v. Yudhvir Singh, (2013) 15 SCC 624***. Equally, the Revisional Court cannot determine disputed questions of credibility or substitute a finding of innocence for the limited

inquiry whether sufficient grounds exist to proceed. These principles must be applied to the material concerning each alleged offence.

11. Insofar as criminal breach of trust is concerned, entrustment of property or dominion over it, followed by dishonest misappropriation or use contrary to the obligation governing that entrustment, is necessary. The distinction between criminal breach of trust and cheating has been reiterated in ***Arshad Neyaz Khan v. State of Jharkhand, AIR 2025 SC 4620***. The allegation in present case concerns the use of maintenance contributions for the benefit of particular apartment owners. Payment by the petitioner herself is not indispensable if common funds entrusted by others were dishonestly diverted. Nevertheless, the material must provide a factual basis for that allegation.

12. The Revisional Court recorded that the statements collected during investigation did not support the allegation that the promoter collected and diverted the maintenance fund and instead described contributions being used by the apartment owners for maintenance. A disagreement about the authority to collect contributions, or the way expenditure ought to have been approved, cannot by itself establish dishonest conversion. The

petitioner submissions have not identified the material establishing the entrustment and dishonest diversion which the Revisional Court found wanting. In these circumstances, the allegation concerning maintenance expenditure does not furnish a sufficient ground to restore the prosecution for criminal breach of trust. The corresponding allegation under Section 13(2) of MOFA necessarily requires the same essential element of criminal breach of trust.

13. As regards cheating, the relevant inquiry is whether there was deception and dishonest inducement when the petitioner parted with the consideration. Subsequent failure to honour an assurance does not, by itself, establish that the transaction commenced with a dishonest intention. At the same time, dishonest concealment of a material fact may amount to deception. The petitioners allegation of nondisclosure cannot therefore be rejected merely because she visited the construction site or because she eventually signed a document containing the disputed provision.

14. The transaction resulted in delivery of possession and execution of a conveyance of the flat. The controversy thereafter centred upon the reservation of terrace use appearing in the declaration and the conveyance and the alleged assurance that

those documents would be corrected. These circumstances do not make the reservation lawful merely because it appears in registered instruments. However, the petitioner must still show material supporting a dishonest intention at the stage of inducement. The later assertion of rights under the declaration and the failure to execute a correction deed do not, without that foundation, supply the missing ingredient of section 420. On the material examined in revision and the submissions advanced before this Court, no sufficient ground has been shown to interfere with the conclusion concerning Section 420 of the Penal Code.

15. The submission concerning common areas requires a separate clarification. In ***Nahalchand Laloochand*** case (Supra), the Supreme Court examined the promoters claim to sell stilt and open parking spaces under MOFA and rejected the claim of an independent saleable entitlement to those common facilities. The decision emphasises that contractual stipulations cannot defeat statutory rights. Its relevance cannot be rejected merely because it arose in civil proceedings. Equally, the decision does not dispense with proof of the ingredients of a particular criminal offence. The validity of the terrace reservation and the criminal liability sought to be attached to these accused are distinct questions.

16. The complaint also alleges obstruction of access to the terrace. The absence of cheating does not, as a proposition of law, exclude wrongful restraint. Section 339 of the Penal Code requires consideration of the right to proceed and contains an exception concerning obstruction of a private way believed in good faith to be lawfully obstructed. Here, the alleged obstruction is inseparable from the assertion of rights under the registered declaration and the express reservation in the sale deed. No independent act of confinement is described. Having regard to the nature of the disputed access and the documentary arrangement under which the other purchasers claimed, the petitioner has not demonstrated a sufficient basis to disturb the revisional result concerning the alleged restraint. This conclusion does not recognise an exclusive proprietary right in favour of those purchasers.

17. The offences under MOFA must be examined on their own statutory requirements. Section 13 expressly penalises specified contraventions by a promoter. It would therefore be incorrect to hold that a breach of MOFA cannot attract criminal prosecution unless cheating under the Penal Code is independently established. Nor is prior resort to a civil forum or the competent authority a general condition for invoking the penal provision. The question is whether the contravention is disclosed and whether its

prosecution is permissible in law.

18. The principal statutory submission advanced before this Court concerns Section 4. The petitioners own case is that the flats were booked in July 1998, that an agreement was promised but was not executed, and that the consideration and other charges were paid in installments during 1998 and 1999. The alleged acceptance of those payments without the prescribed agreement was known to her when the payments were made. The statutory obligation preceding acceptance of money must be distinguished from the later obligation asserted in relation to correction of the conveyance. Execution of the sale deed in August 2002 did not retrospectively cure any earlier contravention, but neither did it constitute a fresh acceptance of the payments made in 1998 and 1999.

19. A later dispute about the terrace does not, merely by being described as continuous, renew limitation for every earlier act. The nature of the duty and the alleged breach of MOFA must be considered in light of the facts disclosed by the petitioner in the complaint. The default under Section 4 relied upon here concerns acceptance of advance payments without the required agreement. On the case pleaded, those receipts were completed in 1999. No later receipt attracting that provision has been identified. The

assertion that the promoter continued to promise a correction deed relates to a different obligation and does not extend the period for prosecuting those earlier receipts.

20. The Revisional Court nevertheless went too far in observing that the complaint would be barred even if limitation were computed from the sale deed of 3rd August, 2002. The complaint was instituted on 28th April, 2005, within three years of that date; even the police registration on 6th May, 2005 was within that period. In the present case the applicable provision is Section 468 of the Code of Criminal Procedure and not the Limitation Act. In ***Roma Ahuja v. The State and Another***, ***AIR 2026 SC 1793***, the Supreme Court has reiterated that the relevant date for this purpose is institution of the complaint or initiation of prosecution, rather than the subsequent date of cognizance. The revisional Courts contrary observation is therefore not approved about bar of limitation. The conclusion concerning the earlier acceptance of payments under Section 4 rests upon the dates and knowledge pleaded in respect of that default by the petitioner herself in the complaint.

21. The remaining allegations cannot be sustained simply by treating the disputed terrace reservation as proof of every

contravention mentioned in the complaint. In relation to Section 5, the alleged diversion of common funds has already been considered. In relation to Section 7, municipal permissibility and the consent required by MOFA are different matters; an affirmative municipal response would not, by itself, establish such consent. Nevertheless, the petitioner must connect the material concerning the alleged works with the statutory prohibition invoked. The submissions made do not demonstrate an overlooked basis in the investigation material for upholding the order of issuance of process by learned Magistrate on that ground.

22. As regards Section 10, the admitted execution of a registered declaration under the apartment ownership arrangement is material. The duty under Section 10(2) to inform the Registrar must be distinguished from the duty to seek registration of a co-operative society under Section 10(1). The mere absence of such a society does not establish contravention of Section 10(2)of the act. The petitioner has not identified material from the Registrars record, or other investigation material, which displaces the revisional conclusion by establishing the specific default alleged. This Court does not hold that an outstanding statutory duty necessarily ceases on execution of an individual sale deed, or that every continuing statutory default is barred

merely because the building was completed earlier.

23. The fact that the police submitted a charge-sheet cannot conclude the judicial inquiry into sufficient grounds to proceed. Conversely, since the proceedings followed a police report, brevity of the Magistrates order is not, by itself, a ground to terminate them. The result must turn on the ingredients of the offences and the supporting material. Having examined the challenge on that basis, the petitioner has not made out sufficient ground for restoring the prosecution.

24. Consequently, the Criminal Writ Petition is dismissed.

25. The judgment and order dated 7th October, 2006 in Criminal Revision Application No.95 of 2006 is left undisturbed in its operative result, subject to the clarifications recorded above. Nothing in this judgment shall be construed as affirming the legality of an exclusive sale or reservation of common terrace space, or as determining any civil or statutory remedy otherwise available to the petitioner in accordance with law.

26. Rule stands discharged.

(HITEN S. VENEGAVKAR)
JUDGE

Tandale