Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1251 OF 2022

Sanjay Bhailal Shah .. Petitioner
Versus
State of Maharashtra .. Respondent

WITH
WRIT PETITION NO. 247 OF 2022

Tribhuvandas M. Rughani & Ors. .. Petitioners
Versus
State of Maharashtra .. Respondent

WITH
WRIT PETITION NO. 160 OF 2022

Jayesh Hiralal Shah (Chairman) & Anr. .. Petitioners
Versus
State of Maharashtra .. Respondent

WITH
WRIT PETITION NO. 1019 OF 2022

Babita Naraindas Gandhi .. Petitioner
Versus
State of Maharashtra .. Respondent

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- Dr. Abhinav D. Chandrachud a/w Mr. Laxminarayan Shukla, Ms. Pragya & Mr. Ameya Khot i/by M/s. Legal Vision, Advocates for Petitioners in WP 1251/2022
- Mr. Aadil Parsurampuria a/w Mr. Laxminarayan Shukla, Ms. Pragya and Ms. Ameya Khot i/by M/s. Legal Vision, Advocates for Petitioners in WP 1019/2022
- Mr. Satish Agarwal (through VC), Advocate for Petitioners in WP 160/2022
- Mr. Siddharth Singh i/by Mr. Ashok Saraogi, Advocate for Petitioners in WP 247/2022
- Ms. Rajeshree V. Newton, APP for State
- Sonawane, PSI, Kandivali Police Station

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 20, 2026

P. C.:

1. Heard learned Advocates appearing for the parties as stated in the appearance memo.

2. These are group of 4 Writ Petitions seeking quashing of FIR No. 928/2021 registered by Kandivali Police Station for the offences punishable under Sections 336, 338, 304(2) and 34 of the Indian Penal Code, 1860 and under Sections 3(1), 3(2) and 3(3) of the Maharashtra Fire Prevention and Life Safety Measure Act, 2006.

3. All the above 4 Petitions are being decided together by this common order as the facts involved therein are common.

4. Writ Petition No. 1251/2022 is filed by Architect – Sanjay B. Shah represented by Advocate Dr. Chandrachud; Writ Petition No. 1019/22 is filed by Ms. Babita N. Gandhi – then Secretary of the Co-operative Housing Society of the subject building represented by Advocate Mr. Parsyranoyrua; Writ Petition No. 160/2022 is filed two Petitioners i.e. then Chairman – Mr. Jayesh Shah and Mr. Nitin Kachalia who is the current Chairman of the subject building represented by Mr. Agarwal and Writ Petition No. 247/2022 is filed by Mr. Tribhuvandas M. Rughani & 2 others – Developers / Builders who

had constructed the subject building. They are represented by Advocate Mr. Singh, instructed by Mr. Saraogi.

5. Offences are registered in view of loss of two lives in a fire incident which occurred on 14th and 15th floor of the subject building on 06.11.2021. Admittedly there is no dispute about the fact that subject building was constructed by the developers Tribhuvandas M. Rughani and two others as also was designed by Architect Mr. Sanjay Shah more than seven years ago before the date of incident and it had all permissions in place including the occupation certificate, fire report, fire NOC granted by Municipal Corporation.

6. Complainant in the present case is State of Maharashtra which has in view of the loss of two lives in the fire incident filed the FIR. Cause of the fire incident is that on the 14th floor, there was a short circuit in the door bell which led to the fire and consequently loss of lives. Chargesheet which is filed holds the Petitioners responsible for the offence of culpable homicide under Section 299 of IPC and therefore in view of the loss of lives, Section 304 of IPC is invoked.

7. The arguments advanced by all the learned Advocates appearing for Petitioners are noted by Court. They are in common and hence for brevity they are not delineated separately herein under.

8. At the outset it is argued that at the highest there can be invocation of the provisions of Section 304A of IPC subject being proved for criminal negligence and in any event, application of Section 299 would be completely incongruous. It is argued that application of Section 299 which is offence of culpable homicide with intention to cause harm but in the present case insofar as present Petitioners are concerned, there is no intention whatsoever which can be attributed to them *qua* their role in the fire in the subject building so as to hold them responsible for the loss of lives.

9. Architect – Mr. Sanjay Shah had designed the building much prior to 2014 and pursuant to the same had duly obtained the occupation certificate on 15.09.2014, copy of which is appended at page No. 39. Copy of the fire report is appended at page No. 31 and the fire NOC is appended at page No. 89. I have perused the same. The only charge which is levied against the Architect is that under the earlier approved plan, there was a gate which was shown and since in the final sanctioned plan, gate was not there, there was difficulty for the fire brigade to reach the concerned building and therefore the Architect has been charged for culpable homicide. It is well settled that when the buildings are planned, plans are amended repeatedly time and again before they get finally approved and validated and ultimately sanctioned. In the present case, it is not the case of

prosecution that the building is not have final sanctioned plan or is unauthorized and the occupation certificate issued on 15.09.2014 *prima facie* justifies the fact that the concerned Planning Authority i.e. Mumbai Municipal Corporation had duly inspected the building and had approved the same for the purpose of residence.

10. Similarly role of the Secretary of the Society, though a thankless job, under the provisions of MCS Act, he cannot be held responsible for something which he is not directly responsible. Cause of action for the fire to occur in the present case is the short circuit which had occurred on the 14th floor door bell of a flat in the said building. If the Secretary is to be held responsible for such incidents in respect of electrical wiring of the door bell of a particular flat, this will lead to a disastrous situation. It is incomprehensible to foist such liability on the Secretary or Chairman or office bearers. In that view of the matter, insofar as the then Secretary as also the present Secretary are concerned, the invocation of provisions of Section 304A against them, in my opinion, is once again completely innocuous, unsustainable and cannot be countenanced in the present facts and circumstances of the case.

11. Insofar as the builder is concerned, the builder steps in such a situation only as a person who does business and builds houses. This is not a case of the prosecution that the builder has constructed an

unauthorized building. He obtained occupation certificate for the building and handed it over to the Society and Society was running the same. In such a situation, how can the builder be implicated for a short circuit in the electrical wiring after 7 years. In that view of the matter, even in the present case, where there is a gap of more than seven years after the building was handed over to the Society, no criminal charge can be levied against the builder since the flats were occupied by the members of the Society.

12. In view of the above observations and findings, all four Petitions deserve to be allowed and are accordingly disposed in terms of prayer clauses as stated in the respective Petitions as herein under:-

WRIT PETITION No. 1251/2022 stands allowed in terms of :-

> *"(b) That this Hon'ble Court be pleased to call for the records and proceedings of this case from the Sr.P.I. of Kandivali Police Station, Mumbai and after perusing the same, quash and to set aside the FIR No.928 of 2021 registered under sections 336, 338, 304(2) and 34 of Indian Penal Code Read With Sections 3(1), 3(3) and 3(4) of Maharashtra Fire Prevention and Life Safety Measures Act, 2006 by Kandivali Police Station against the petitioner; a/w the chargesheet filed in FIR No.928 of 2021 a/w Session Case No.693 of 2022 pending in the files of Additional Sessions & Judge, Dindoshi.*

WRIT PETITION No. 247/2022: stands allowed in terms of :-

> *"(a) that this Hon'ble Court be pleased to issue appropriate writ, order and direction directing the Respondents to forthwith furnish the copy of the FIR in respect of FIR No. 928 of 2021 registered by the Respondents registered under the provisions of Section 336, 338, 304(2), 34 of IPC r/w. Section 3(1), 3(3), 3(4) of Maharashtra Fire Protection and Protection Act 2016 on such terms as this Hon'ble Court may deem fit and proper.*

b) that this Hon'ble Court be pleased to issue appropriate writ, order and direction directing the quashing of FIR being FIR No.928 of 2021 registered by the Respondents registered under the provisions of Section 336, 338, 304(2), 34 of IPC r/w. Section 3(1), 3(3), 3(4) of Maharashtra Fire Protection and Protection Act 2016 as against the Petitioners on such terms as this Hon'ble Court may deem fit and proper;

WRIT PETITION No. 160/2022 stands allowed in terms of :-

"(A) To call for the records and proceedings of this case from the Sr.P.I. of the Kandivali Police Station, Mumbai and after persuading the same, quash and to set aside, the said impugned Criminal Proceeding, in F.I.R. No. 928/2021 dated 20.11.2021 of Kandivali Police Station, Mumbai and Chargesheet filed before Hon'ble City Session Court at Dindoshi in Criminal Case No.693/22 being heard by the Hon'ble Trial Court;

(B) considering the peculiar facts and circumstances of this case, the fabricated and malicious intentions of the Complainant, the FIR No.928/2021 & Chargesheet may be kindly quashed and set aside.

(C) That Hon'ble Court may be pleased to stay the proceeding against Accused No.5 and 6 before the Hon'ble City Session Court at Dindoshi at Goregaon at Mumbai in Criminal Case No.693/2022."

WRIT PETITION No. 1019/2022 stands allowed in terms of :-

"(b) To call for the records and proceedings of this case from the Sr.P.I. of Kandivali Police Station, Mumbai and after perusing the same, quash and to set aside the FIR No. 928 of 2021 registered under sections 336, 338, 304(2) and 34 of Indian Penal Code Read With Sections 3(1), 3(3) and 3(4) of Maharashtra Fire Prevention and Life Safety Measures Act, 2006 by Kandivali Police Station against the petitioner;"

13. All four Petitions are allowed and disposed.

[MILIND N. JADHAV, J.]

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RAVINDRA MOHAN AMBERKAR

Digitally signed by RAVINDRA MOHAN AMBERKAR
Date: 2026.08.20 20:08:56 +0530