

(1999) 12 BOM CK 0009

In the Bombay High Court

Case No : Criminal Application No. 1076 of 1993

A. H. Ghaswala and others

APPELLANT

Vs

Rajendra J. Shah and another

RESPONDENT

Date of Decision : 04-12-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 114, 500

Citation : (1999) 12 BOM CK 0009

Hon'ble Judges : Ranjana Desai, J

Bench : Single Bench

Advocate : S. M. Mhamane, for the Appellant; G. C. Mohanty instructed by Denzil D "mellow and Mrs. R. P. Sabarwal, Assistant Public Prosecutor for State, for the Respondent

Final Decision : Dismissed

Judgement

Smt. Ranjana Desai, J.—This application filed u/s 482 of the Code of Criminal Procedure seeks quashing and setting aside of the summons dated 22nd January, 1993, issued in Case No. 1/S of 1993 pending in the 14th Court at Girgaon and dismissal of the said complaint.

2. Briefly stated the facts which give rise to this application are as under:

The petitioners, who are original accused Nos. 1, 2 and 3 are the members of the Managing Committee of the Simla Co-operative Housing Society situated at 51-B, Laxmibai Jagmohan Marg, Bombay-400036. At the relevant time petitioner No. 1 was the Chairman, petitioner No. 2 was the Vice-Chairman and petitioner No. 3 was the Honorary Secretary of the said society. They are three out of the 12 members of the managing committee. I am informed by Shri Mhamane, the learned counsel appearing for the petitioners that, an administrator came to be appointed to take charge of the affairs of the society. The elections were held on 3-5-1992, after the appointment of the administrator and in that election the present petitioners came to be elected. The petitioners had nothing to do with

the management of the society from 1989 till the date of their election i.e. 3-5-1992. Respondent No. 1 is a member of the said society. He occupies flat No. 601 in B-Block of the said society. The said society is a large housing complex comprising five blocks i.e. A to E having about 250 flats and 80 closed garages or shops on the ground floor, all being held on ownership basis. The yearly budget of the society runs into over Rs. 9 lakhs and the amounts of maintenance charges are billed to members quarterly. In order to induce prompt payment, the society offers some incentive rebate to the members making payment within seven days. Though the Co-operative Societies Act. Rules and Bye-laws enable the society to take action to realise its dues, no such coercive action has been taken by the society except legal proceedings taken against 3 to 4 members.

It appears that in 1989, during the tenure of the previous managing committee and pursuant to a resolution passed at the general body meeting, it was decided to collect the sum of Rs. 21/- per sq.ft. as Special Repair Fund amounting to Rs. 49.20 lacs. The actual amount collected from the members was Rs. 40.82 lacs and the balance of Rs. 8.38 lacs had remained to be paid by the members. The petitioners as well as respondent No. 1 had paid their contributions. The said collection was made in seven quarterly installments beginning from 1-4-1989 and ending on 1-10-1990 (both inclusive). The work of repairs commenced by 9-3-1992 when the earlier Managing Committee was superseded. The entire collected amount was virtually expended and there were still outstanding bills to the tune of Rs. 14.50 lacs and there was still more work to be done. The contractor who was employed by the previous committee had not done his job properly. The contractor had also done the internal repairs to some of the flats including that of respondent No. 1. The members were billed for internal repair work by the previous managing committee. Petitioner No. 2 was also billed. A large number of them had paid the bills and some bills were outstanding. Respondent No. 1, according to the petitioners, was in arrears in respect of internal repair charges billed to him in bills dated 1-10-1991 and 1-4-1992 and the amount thereof was carried forward to bill dated 1-7-1992 which was received by him on 11-7-1992. Since new managing committee had no sufficient funds and as the previous managing committee had mismanaged the affairs of the society a special general meeting was convened by petitioner No. 3 and the maintenance charges were increased. Respondent No. 1 did not attend the special general meeting held on 5-7-1992.

In respect of the bill dated 1-7-1992, received by respondent No. 1, on 11-7-1992, respondent No. 1 sent reply dated 14-7-1992. He sent a cheque for maintenance charges and pointed out that he had intimated to the Hon. Secretary on 13-4-1992 that he had been illegally and fraudulently debited for the internal repairs and that the credit note for the said amount should be sent to him before 31st July, 1992. From this it prima facie appears that it is the grievance of the petitioner that he had paid money for the internal repairs and some amount was fraudulently and illegally debited in his account.

According to respondent No. 1 in June and September 1992 the said society put up notices signed by petitioner No. 3 describing respondent No. 1 as a defaulter. This prompted him to approach the criminal Court.

3. Respondent No. 1 filed a complaint in the Court of Metropolitan Magistrate 14th Court at Girgaon, Bombay on 24th of November, 1992, against the petitioners stating inter alia that the petitioners had committed offence of defamation and abetment thereof u/s 500 r/w section 114 of the Indian Penal Code. This complaint and the process issued thereon is the subject matter of the present petition.

4. In the said complaint respondent No. 1 admitted that the new management committee of which the present petitioners are members was constituted in or about May, 1992. It is stated that in the year 1989, some disputes arose regarding repairs of the said building and about collection of Re. 1/- per sq. ft. per month from the occupiers of the flat. In one general meeting of the society it was observed that a new revised estimate of the said repairs should be submitted by the architect. In the year 1992, respondent No. 1 got his flat repaired and spent an amount of Rs. 8,500/-. According to him the society was bound to reimburse him the amount of Rs. 8,500/-. In the year 1991, he had spent a sum of Rs. 5,000/- as labour charges for augmenting the water supply to the society building. He had submitted vouchers to that effect. Society had accepted the vouchers and there was no reply from the society. It is further averred in the complaint that due to the mismanagement of the society, the society was suspended and an administrator was appointed. Respondent No. 1 "s bills were pending. On 14th July, 1992, he wrote a letter to the Honorary Secretary of the Society with regard to the bill dated 1st July, 1992, whereby he was called upon to pay arrears. In his letter he pointed out that the arrears in the bill were not due and payable by him. The society did not send any reply to his letter dated 14th July, 1992. According to him as the new society was already formed and the petitioners became active members of the society, if any resolution is passed defaming any members by the managing committee, all the members of the society are responsible for the acts of the society.

5. It is further stated that on 5th May, 1992, a special general meeting was called and maintenance charges were raised four times and at the end of June, 1992 the society put up a notice on the board signed by petitioner No. 3 as the honorary secretary and under instructions from the managing committee mentioning outstanding dues shown against each of the members. Respondent No. 1"s name was put up in the notice showing a sum of Rs. 20,204.40 as outstanding against him. He sent a reply to the managing committee dated 14th July, 1992, stating that there were no dues outstanding against him. Respondent No. 1 contended that the petitioners were responsible for the said notice put up on the board. Respondent No. 1 further averred in the complaint that instead of bringing about the proper adjustment with regard to the outstanding dues between him and the society, again another notice was put up and published in

the month of September, 1992 under instructions from the committee members and the said notice was signed by the manager under instructions from the petitioners. In this notice it was stated that the amount due from the members should be paid on or before 30th September, 1992, and if the said amount was not paid they would be declared defaulters. As per the bye-laws the defaulters will not be permitted to vote.

6. According to respondent No. 1 these two notices namely one put up in June 1992 and the other put up in September, 1992 constitute criminal offence of defamation. These notices create imputation against respondent No. 1 intending to harm his reputation. By declaring respondent No. 1 as a defaulter the petitioners have lowered his prestige, respect and estimation in the eyes of the members of the society and also the public in general. He contends that he was not a defaulter. He was regular in paying the dues of the society. On the complaint filed on these allegations on 22nd of January, 1993, the learned Magistrate issued summons to the petitioners. It is this complaint and the order passed thereon which the petitioner seek to quash.

7. I have heard Shri Mhamane, learned counsel appearing for the petitioners and Shri Mohanty, learned advocate holding for Shri D'mello who appears for Respondent No. 1 and Smt. R. P. Sabarwal, learned A.P.P. who appears for the State.

8. Drawing my attention to the contents of the complaint, Mr. Mhamane contended that the complaint does not make out any criminal offence at all. He stated that admittedly the petitioners came on scene after May, 1992 and the arrears are in respect of period prior to May 1992. Mr. Mhamane, contended that in the petition his clients have denied that any such notices were put up by them and though in this petition Rule was issued as far back as on 19-4-1993, till date no reply is filed by respondent No. 1 and, therefore, there is no denial of the categorical assertion made by the petitioners that such notices were not put up by them. Mr. Mhamane further contended that assuming that such notices were put up, it is a matter of accounts and no offence of defamation can be made out from the notices. Respondent No. 1 can approach the Civil Court if he feels that no amount is due from him to the society. It was wrong on the part of respondent No. 1 to set the criminal law into motion for a dispute which is entirely civil in nature. Mr. Mhamane therefore, contended that this/Court should quash the proceedings.

9. As against this Shri Mohanty learned counsel appearing for respondent No. 1 submitted that the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure has to be used sparingly and in a case where interest of justice demand the invocation thereof. He submitted that this is not one of those case which call for any interference from this Court. He further submitted that the fact that the administrator is appointed indicates that the affairs of the society were mismanaged. Respondent No. 1 had sent notices to the society stating that nothing was due from him. The society has not bothered to send any

reply and yet notices were put up calling him a defaulter. He, therefore, submitted that the offence of defamation is squarely made out and no interference is warranted.

10. The learned counsel have taken me through the complaint. Admittedly the petitioners were not in charge of the affairs of the society till May, 1992. The affairs of the society were entrusted to the administrator and the petitioners were elected to the managing committee after the administrator was appointed and the elections were held. The grievance of respondent No. 1 seems to be that nothing is due from him to the society. He states that he sent notices to the society which were not replied. In the complaint he states that instead of bringing about proper adjustment with regard to the outstanding dues between him and the society, notices were put up and published in the month of June and September, 1992. That there was some dispute between respondent No. 1 and the society as regards dues is obvious. Assuming that the society has put up a notice declaring him as defaulter, it would only mean that it is the case of the society that some amount is due from respondent No. 1 whereas respondent No. 1 says that nothing is due from him to the society. To me it appears to be a matter of accounts and entirely a civil dispute. Putting up a notice on the notice board showing that a particular amount is due from a member may not in all cases amount to defamation without there being any other substantial material to make out a case of defamation. In this case respondent No. 1 has been constantly agitating that he has paid the amount. The petitioner's case is to the contrary. Indeed if accounts are taken and it is found that the case of the society is correct, can it be said that the petitioners, assuming that they had put up a notice, had put up a wrong notice.

In my opinion the texture of the complaint suggest a civil dispute.

11. Assuming that such notices were put up, I am not inclined to accept the case of respondent No. 1 that they were put up with an intention to harm the reputation of respondent No. 1. If in all such cases where society puts up notices for recovery of dues, criminal law is set into motion without there being any other material. Indeed there will be a chaotic situation. Respondent No. 1 may, however, if so advised resort to civil proceedings for recovery of any amount which he says the society is supposed to pay him. In the peculiar facts and circumstances of the case, the complaint does not spell out the offence of defamation.

12. In my opinion the present complaint and the process issued thereon is abuse of the process of the Court and to secure the ends of justice it would be necessary to quash the said process. In the result I pass the following order :-

"(a) The complaint dated 24th of November, 1992, pending on the file of the Court of Metropolitan Magistrate, 14th Court at Girgaon, being Case No. 1/S/1993 and the process issued thereon are quashed and set aside.

(b) It is made clear that respondent No. 1 may, if he is so advised approach civil

Court, for any money claim which he may have against the said society. This Court has not expressed any opinion on this aspect of the matter. All contentions of the parties in connection with the same are kept open.

(c) The petition is disposed of in the aforesaid terms.