
(1990) 06 BOM CK 0015

In the Bombay High Court

Case No : Criminal Application No. 1926 of 1989

Babulal Mishrimal Vardhan and others

APPELLANT

Vs

Sudershan Wadia and another

RESPONDENT

Date of Decision : 12-06-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 309, 482
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (1991) CriLJ 298

Hon'ble Judges : K.N. Patil, J

Bench : Single Bench

Advocate : P.P. Hudlikar, R.Y. Mirza, P.P, for the Appellant; Party in person, for the Respondent

Judgement

1. This is an application u/s 482 of the Criminal Procedure Code for stay of criminal proceedings being Criminal Case No. 92/S of 1984 on the file of the Additional Chief Metropolitan Magistrate, IX Court, Bandra, Bombay. In the alternative, the petitioners are praying for quashing the said criminal proceedings.

2. Respondent No. 1 - Sudarshan Wadia has filed a complaint case against the petitioners under sections 4, 5, 7, 9, 10 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short "the Act") and under sections 406 and 420 of Indian Penal Code. Petitioner No. 7 - M/s. Venus Enterprise is a partnership firm of which petitioners Nos. 1 to 6 are the partners. Petitioner No. 7 constructed a building known "Jal Darshan". According to respondent No. 1, the petitioners sold Flat No. 503 situate on the 5th floor in the said building to his wife Neena in the year 1978 for a consideration of Rs. 1,26,000/- and was put in possession thereof in November, 1981. In the complaint, it is alleged that the accused petitioners did not enter into a written agreement as required u/s 4 of the Act. In the month of November, 1981 the petitioners surrendered front compound area to Bombay Municipal Corporation by obtaining additional F.S.I. in lieu thereof

without the consent of the flat purchasers and constructed more flats. The petitioners also did not form a co-operative society of the flat-purchasers u/s 10 of the Act. The petitioners have misappropriated the gains by selling additional flats and have committed fraud and cheated the complainant's wife and other flat-owners. They constructed the building by making illegal additions to the original plan. The learned Additional Metropolitan Magistrate issued process against the petitioners. Respondent No. 1 - complainant did not attend the Court on a certain date and, therefore, the complaint came to be dismissed, but afterwards it was restored. The order of restoration was challenged by the petitioners in the Sessions Court and also in this Court. The petitioners filed an application for stay of the criminal proceedings, but the same was rejected by the Metropolitan Magistrate.

3. It is not disputed that the petitioners have filed a suit being Suit No. 2480 of 1983 on the Original Side of this Court wherein the ownership of Smt. Neena Sudarshan Wadia in Flat No. 503 is under challenge. Smt. Neena Sudarshan Wadia, wife of respondent No. 1, has also filed Civil Suit No. 3224 of 1982 against the petitioners in the City Civil Court, Bombay, challenging the construction of the additional floors. Interim order of injunction made in that suit was challenged in this Court and the matter was taken to the Supreme Court which allowed the petitioners to construct additional floors on certain conditions.

4. Shri Hudlikar, learned Advocate appearing for the petitioners, argued that criminal proceedings should be stayed till Suit No. 2480 of 1983 filed by the petitioners in this Court is decided. He argued that in that suit the petitioners have challenged the title or ownership of the purchaser Smt. Neena Sudarshan Wadia. Since there is a dispute about the ownership of the flat of respondent No. 1's wife, it is necessary that the criminal proceedings should be stayed till the decision of that suit. Otherwise there is every possibility of inconsistent findings recorded by the Courts because the Criminal Court will have also to consider this matter. Shri Hudlikar, therefore, argued that this Court should stay the criminal proceedings in exercise of its inherent powers and also u/s 309(2) of the Criminal Procedure Code. The petitioners had made an application purporting to be u/s 309(2), Cr.P.C. before the Magistrate and the same has been rejected. Merely because the Civil Courts are seized with the question about the purchase of the flat or ownership of the complainant's wife, criminal proceedings which are properly instituted and of which cognizance is taken by the learned Magistrate in due process of law cannot be stayed unless there are compelling grounds to do so. Even if the Criminal Court is required to consider the question about the title or nature of the transaction between the petitioners and the wife of respondent No. 1 - complainant in respect of this flat, that would be for the purpose of decision of the criminal case. The decision in the criminal case cannot operate as *res judicata* in a civil proceedings. The petitioners, therefore, may not apprehend about the findings which the Criminal Court may record in the criminal proceedings. They will get an opportunity to meet the case made out by the complainant in the complaint. They may adduce oral or documentary evidence to

rebut the complainant's case and the contentions as regards title or nature of the transaction. I am, therefore, of the opinion that there is no need to stay the criminal proceedings which were Instituted in the year 1984.

5. Shri Hudlikar next contended that respondent No. 1 - Sudarshan Wadia has no locus to file the complaint. The transaction was with the wife of respondent No. 1 and at the most she may be the aggrieved party. He argued that respondent No. 1 cannot set the criminal law in motion as a constituted attorney of his wife. Respondent No. 1 denied that he is a constituted attorney of his wife and contended that he has not filed the criminal case on behalf of his wife but he has set the law in motion on his own on behalf of the other flat-owners including his wife and father. I do not wish to express any opinion on the question whether respondent No. 1 - complainant has a locus or right to initiate the present criminal proceedings and it will be open for the petitioners-accused to raise it at the time of the trial if they desire to do so. Suffice it to say that the learned Magistrate has taken cognizance of the complaint filed by the complainant on his own.

6. Shri Hudlikar argued that this is a fit case in which this Court should exercise inherent powers u/s 482, Cr.P.C. to quash the criminal proceedings. He invited my attention to the fact that the suits are pending in the High Court and the City Civil Court and, therefore, no purpose will be served by allowing the criminal proceedings to proceed since the dispute is one of civil nature and the proper forum to adjudicate it is the Civil Court. It is true that civil litigation between the parties is pending in the courts, but, in my opinion, that would not be a sufficient ground to quash the criminal proceedings. If the allegations made in the complaint taken as they are prima facie disclose commission of offences, then the question of quashing the criminal proceedings would not arise. In the complaint in para 3, the complainant has alleged that his wife purchased Flat No. 503 and has paid full price of Rs. 1,26,000/- and she was put in possession of the flat in November, 1981. In the complaint he alleged that in spite of repeated requests the petitioners did not enter into an agreement in terms of Section 4 of the Act. He has made allegations saying that the petitioners have committed an offence under sections 4, 5, 7, 9, 10 and 13 of the Act. He also alleged that the petitioners have committed fraud and cheated him and other flat-owners by misappropriating additional money which they have received by selling flats constructed on additional floors. The allegations made in the complaint prima facie disclose commission of these offences and, therefore, the criminal proceedings cannot be quashed at the threshold. Respondent No. 1 complainant will have to be given an opportunity to substantiate the allegations made by him against the petitioners-accused who will also get an opportunity to meet them by adducing oral or documentary evidence. I wish to make it clear that I have made all the above observations only to find out whether the criminal proceedings should or should not be quashed under S. 482 of Criminal Procedure Code and they should not influence the learned Magistrate will decide the case on evidence of the parties - oral as well as documentary - adduced in the criminal

proceedings. In my opinion, the petitioners have not made out a case for quashing the criminal proceedings at the initial stage.

7. Respondent No. 1 argued that in Criminal Writ petition No. 1081 of 1988 Shri Babulal Mishrimal Vardhan v. Sudershan Wadia decided on 6th February, 1989, this Court considered the merits of the case and held that there are no grounds to quash the proceedings. I have seen a copy of the judgment in the said Writ Petition and I find that this Court did not go into the merits of the complaint filed by the complainant because it is possible that the observations may come in the way of the parties in future. However, this Court noted that the parties have filed suits against each other and these suits are pending. In the said Writ Petition, this Court upheld the order passed by the Magistrate restoring the complaint filed by the complainant which was dismissed in default and confirmed by the Sessions Court, Bombay, and did not decide the question as to the locus of the complainant to file the complaint and the question of quashing the complaint case in exercise of powers u/s 482 of the Criminal Procedure Code.

8. In the result, the Criminal Application is dismissed. Stay vacated. Rule discharged. The Criminal Case should be disposed of as expeditiously as possible. The parties are directed to remain present before the Magistrate on 30th July, 1990.

9. Rule discharged.