

(1998) 09 BOM CK 0007

In the Bombay High Court

Case No : Criminal Writ Petition No. 433 of 1991

Mrs. Mahayanoo N. Irani and Another

APPELLANT

Vs

Jahangir N. Irani and Another

RESPONDENT

Date of Decision : 17-09-1998

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 24
Penal Code, 1860 (IPC) — Section 109

Citation : (1998) 100 BOMLR 779

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.K. Chandrashekhara Das, J.—A complaint was filed by the respondent No. 1 before the Metropolitan Magistrate, 14th Court, at Girgaum, Bombay in Case No. 38/89 purported to be u/s 24(4) of the Bombay Rent Act read with Section 109 of the I.P.C. Apart from the petitioners, there are other 4/5 accused who are all the landlords of the flat No. 8 on the 3rd floor of Islam Club Building, 3 Sea face, Chowpatty. Bombay-7. The allegation against the accused including the petitioners is that they were not allowing the respondent No. 1 to use the lift. It is the case of the petitioners that the lift in the building stopped working since the end of June, 1989.

2. Further the case of the complainant is that the accused No. 6 with the support of her brother accused No. 7 without consulting any other tenant unilaterally carried out temporary repairs of the lift and accused No. 6 disconnected the call button of the first and second floor of the lift and was using the lift only for the personal use. The lift cage was chained and locked on the third floor by accused No. 6 and other, so that no other tenant is able to use the same.

3. From the facts as disclosed in the complaint it can be seen that the accused Nos. 6 and 7 has withheld the essential supply of service enjoyed by the tenants in respect of the premises. It is disclosed clearly, that the accused were also

tenants. In order to attract Section 24(4) of Bombay Rent Act, the act complained of must be anything done by the landlord. Admittedly accused are not the landlords. Therefore an offence u/s 24(4) cannot be said to have been committed by the petitioners. Section 24 clearly envisages that the disconnection of essential services must be caused by the landlord. Therefore in the light of the facts disclosed in the complaint no offence u/s 24(4) is disclosed. Therefore the Magistrate was not at all justified in issuing process against the petitioners in the aforesaid complaint. It is therefore necessary to quash the proceedings initiated by the Metropolitan Magistrate, 14th Court at Girgum, Bombay in Case No. 32/S/89.

In the result the writ petition is allowed. Rule is made absolute in terms of prayer Clause (a).

No order as to costs.

Prayer Clause (a) :

The learned Magistrate failed to appreciate that on the basis of the statement of the 1st Respondent himself that he and the 1st Petitioners are co-tenants. Section 24(1) of the Bombay Rent Act could not be attracted.