

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 1995 OF 2004

IN

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Bombay Municipal Corporation .. Appellant

versus

S.S. Jasrani & ors. .. Respondents

...

Mrs. Teja Katdare with Shri N.A. Shaikh for the appellants.

Mr. Sanjay Udeshi i/b Sanjay Udeshi & Co. for the respondent nos. 1 to 3.

Mr. D.P. Adsule, APP for the State.

CORAM : V.M. KANADE, J

DATED : 30th November 2004.

P.C:-

1. Pursuant to the order passed by this Court, Officer of the Corporation alongwith the members of the Managing Committee have taken inspection of the

premises in question and they have found that there is no leakage. The report submitted by the Officer of the Corporation as also the notes prepared by the Secretary of the Managing Committee are taken on record and marked "X" for identification.

2. Heard the learned counsel appearing on behalf of the Corporation and the learned counsel appearing on behalf of the respondents.

3. The Corporation has filed these appeal challenging the judgement and order passed by the Metropolitan Magistrate, 41st Court, Shindewadi Dadar, Mumbai. The respondents are the members of the Managing Committee of Sahakar Niketan Co-op. Housing Society. The accused no.1 is the Secretary. Accused no.2 is the Chairman and the accused no.3 is the Co-operative Housing Society. The allegation of the Corporation is that the society had not carried out the necessary repairs as required u/s.354 of the MMC Act. The respondents having failed to comply with the requisition made in the said notice, a complaint was filed u/s.374 r/w 471 of the Act.

4. The learned Magistrate after perusing the

evidence adduced by the prosecution acquitted the accused of the offence with which he was charged. In the present case, Record and Proceedings were called and the learned counsel appearing on behalf of the Corporation has relied the oral and documentary evidence adduced by the Corporation. She has submitted that the inspection report clearly states that inspite of having received notice u/s.354 of the MMC Act, the accused failed to carry out the necessary repairs and that the flat in question was not repaired and therefore, the accused ought to have been convicted by the trial Court.

5. The learned counsel appearing on behalf of the respondents has submitted that the occupier with flat nos.13 and 14 Mr. Manish Toprani had made allegations against the members of the Managing Committee and a similar complaint was filed in 1989 by the Corporation which was dismissed and the members of the Managing Committee were acquitted. Similar dispute was raised in the Co-operative Court against the members of the Managing Committee which was also dismissed and the order of the Co-operative Court was confirmed by this Court. After having perused the evidence on record, in my view, this is not a fit case where this Court

should interfere with the findings which are recorded by the trial Court. The trial Court has observed that the said Manish Toprani had filed similar cases in the past which were dismissed and that there was a long history of litigation between the said Manish Toprani and the members of the Managing Committee. The trial Court has further observed that no independent evidence has been adduced by the Corporation. The learned Metropolitan Magistrate has also considered the inspection report submitted by the concerned Officer and has given cogent reasons why the said report cannot be relied upon. I cannot see any reason to interfere with the said finding. In my view, the said finding is neither unreasonable nor perverse.

6. Leave in both the appeals is refused. Appeals are dismissed.

7. Parties to act on a copy of this order duly authenticated by the Sheristedar.

V.M.KANADE, J