

SUPREME COURT OF INDIA

Dahisar Saraswati Co-op. Housing Society Ltd.

Vs.

State of Maharashtra

CrI.A.No.1550 of 2010

(Abhay Manohar Sapre and Indu Malhotra,JJ.,)

12.10.2018

JUDGMENT

Abhay Manohar Sapre,J.,

1. This appeal is filed against the final judgment and order dated 27.7.2009 passed by the High Court of Judicature at Bombay in Criminal Application No. 241 of 2008 whereby the said application filed by the appellant was dismissed.
2. Brief facts of the case lie in a narrow compass as would be clear from its narration infra.
3. The appellant herein-a housing cooperative society was the complainant. They filed a complaint under the provisions of Maharashtra Ownership Flats Act (for short called “the Act”) against respondent nos. 2 to 6 in the Court of Metropolitan Magistrate 26th Court Borivali Mumbai being Complainant Case No.429/55/04 seeking prosecution of respondent nos. 2 to 6 for allegedly committing several violations of the provisions of the Act in execution of one housing project and while allotting the flats purchased by the parties in the said housing project.
4. By order dated 01.11.2007, the Metropolitan Magistrate dismissed the complaint and acquitted all the respondent nos.2 to 6. The appellant felt aggrieved and filed leave to appeal before the High Court under Section 378 (4) of the Criminal Procedure Code (for short ‘the Cr.P.C.’).
5. By impugned order, the High Court declined to grant leave to file appeal to the complainant (appellant herein) which has given rise to filing of this appeal by the complainant-housing cooperative society by way of special leave to appeal in this Court.
6. The short question which arises for consideration in this appeal is whether the High Court was justified in declining to grant leave to file appeal against the order dated 1.11.2007 passed by the Metropolitan Magistrate.

7. Having heard the learned counsel for the parties and on perusal of the written submissions of the parties and the record of the case, we are inclined to allow the appeal, set aside the impugned order and grant leave to the appellant (complainant) to file an appeal before the High Court to question the legality and correctness of the order passed by the Metropolitan Magistrate Borivali (Mumbai) as contemplated under Section 378(4) of the Cr.P.C.

8. We have perused the order dated 01.11.2007 and taken note of the facts which led to the passing of the said order, coupled with the grounds on which leave to file appeal was prayed for.

9. Having perused the order dated 01.11.2007, we are of the view that the High Court ought to have granted leave to the appellant (complainant) to file criminal appeal. In other words, having regard to the nature of violations complained of in the context of relevant provisions of the Act coupled with the material on record, a regular hearing by way of appeal before the High Court was necessary to examine the entire issue on facts and law which ought to have been granted to the complainant(appellant herein).

10. In light of aforesaid discussion, we allow the appeal, set aside the impugned order, and grant leave to the appellant (complainant) to file an appeal in the High Court against the order dated 1.11.2007 passed by the Metropolitan Magistrate (26th Court) Borivoli Mumbai in complaint case no 429/55/04.

11. As a consequence of grant of leave by this Court to the complainant, the matter is now remanded to the High Court for deciding the complainant's appeal on merits in accordance with law.

12. We may observe that we have not expressed any opinion on the merits of the case and therefore, the High Court will decide the appeal filed by the appellant (complainant) on merits strictly in accordance with law, uninfluenced by any observations made.

13. Liberty is granted to the parties to raise all the issues as are available to them in the appeal including any subsequent events in support of their case. It is for the High Court to decide its relevancy while deciding the appeal on merits.

14. We request the High Court to expedite the hearing of the appeal because the case is quite old.