

MHRG070008562023



CRI.M.A.NO.170/2023

Labdhi Garden Co-housing society Ltd.

Vs.

Labdhi Life style ltd. & others

ORDER BELOW EXH.1

The present complaint is filed by the complainant alleging commission of offences punishable under Sections 418, 500 and 504 read with Section 34 of the Indian Penal Code against the accused.

2. The case of the complainant, in brief, is that accused No.1 is a body corporate, accused No.2 is its Managing Director and accused No.3 is an employee entrusted with post-sale service and allied functions. It is alleged that at the time of launching the housing project known as Labdhi Garden, the accused had made various representations and assurances to flat purchasers, including the assurance of providing two buses for commuting of residents. According to the complainant, only one bus was provided and though the said bus was allegedly meant for the benefit and use of the complainant society, the same continued in the name of accused No.1 and was not transferred in the name of the complainant society despite

repeated requests.

3. It is further alleged that due to failure of the accused to transfer the vehicle and hand over relevant documents, the complainant society was compelled to bear various expenses including taxes, insurance premium, PUC charges, penalty and other incidental charges in respect of the said vehicle. It is also the case of the complainant that certain emails sent by the accused contained threatening, provoking and defamatory imputations affecting the reputation of the complainant society and its office bearers. Along with the complaint, the complainant has produced prima facie documents including copy of registration certificate of the society, copy of resolution passed by the society, vehicle particulars, invoice / retail invoice of the vehicle, tax receipts, certificate of insurance, pollution control certificate, copy of legal notice and copies of email communications exchanged between the parties.

4. Before issuance of process, inquiry under Section 202 of the Code of Criminal Procedure was directed. In pursuance thereof, the concerned police officer conducted inquiry and submitted report. The said report is taken on record. I have also carefully perused the complaint, verification statement, inquiry report under Section 202 Cr.P.C. and the prima facie documents placed on record by the complainant.

5. I have heard the learned advocate for the complainant. The learned advocate submitted that the accused had induced the purchasers by making representations regarding amenities and transport facility, but thereafter failed to honour the said commitment in its true spirit. It is argued that the bus in question was purchased for the use of the complainant society, yet the accused intentionally retained ownership thereof and withheld the necessary documents, thereby causing wrongful loss to the complainant and corresponding wrongful gain to themselves. It is further argued that because of such conduct, the complainant society was required to incur expenditure to the tune mentioned in the complaint towards taxes, insurance and other charges.

6. The learned advocate for the complainant further submitted that the email dated 09.05.2023, wherein reference is made to forgery and threat of criminal action, contains imputations lowering the image of the complainant society and its managing committee and also amounts to intentional insult and provocation. It is thus submitted that the ingredients of Sections 418, 500 and 504 of the Indian Penal Code are prima facie disclosed and therefore process deserves to be issued.

7. The learned advocate for the complainant has also filed written notes of arguments. I have perused the said written notes of arguments. In the said written notes, it

is contended that the accused had promised to provide two buses but supplied only one, that the said vehicle was meant for the society, that the accused deliberately failed to transfer it despite repeated follow-up, and that the complainant had to bear the financial burden of taxes, insurance and penalties. It is also contended therein that the email communication referring to forgery and criminal case constitutes defamation and intentional insult. On the basis of these submissions, prayer is made for issuance of process under Section 204 Cr.P.C.

8. Upon careful consideration of the complaint, verification, inquiry report and prima facie documents, I found that the core dispute between the parties arises out of handover process of the society, transfer of vehicle documents, ownership / use of the bus, payment of taxes and allied obligations, and settlement of accounts between the developer and the society. The email correspondence placed on record by the complainant itself shows that there were several pending issues between the parties, namely handover of society affairs, bus documents, ADDA software credentials, bank account related NOC, accounts clarification, and other infrastructure and management issues. I further found that the documents relied upon by the complainant, particularly the email correspondence, indicate a continuing dispute regarding administrative, contractual and handover obligations. The tenor of the correspondence shows grievance, follow-up, non-

cooperation, allegation and counter-allegation between the society and the developer side. However, merely because there was failure to transfer the vehicle or failure to furnish documents in the manner expected by the complainant, the same by itself would not ipso facto amount to criminal offence unless the necessary ingredients of the penal provisions are prima facie disclosed.

9. In so far as the alleged offence under Section 418 IPC is concerned, the essential requirement is that there must be prima facie material showing dishonest intention on the part of the accused at the inception of the transaction, coupled with cheating causing wrongful loss to a person whose interest the offender was bound to protect. On perusal of the complaint and prima facie documents, I found that the material placed on record does not disclose such initial dishonest intention. At the highest, the material shows a dispute regarding performance of promise, transfer of documents, ownership of vehicle and liabilities arising during the handover process. Such allegations, even if taken at face value, predominantly disclose a dispute of civil character arising out of obligations and arrangements between the parties.

10. The complainant has relied upon tax receipts, insurance documents, PUC certificate and other vehicle-related documents to contend that the society had to incur expenditure. These prima facie documents may indicate

that certain expenses were borne by the complainant in relation to the vehicle. However, these documents by themselves do not prima facie establish that the accused acted with the requisite mens rea for the offence of cheating under Section 418 of IPC. Whether such expenditure is recoverable from the accused and whether the accused were bound to transfer the vehicle in the complainant's name are matters which appear to be more appropriately triable before a competent civil forum.

11. In so far as the alleged offence under Section 500 IPC is concerned, the principal reliance is on the email communication wherein it is stated that if the complainant forges documents and applies for NOC, criminal case would be filed. I found that the said email was part of correspondence exchanged directly between the parties in the backdrop of the dispute concerning RTO clearance and handover process. The complainant's own documents show that the said communication was exchanged in the course of dispute resolution / dispute communication between concerned persons. Prima facie, the said communication appears to be assertion of the sender's stand in the context of the ongoing dispute. From the material placed on record, I do not find sufficient prima facie documents to show publication of defamatory imputation in the legal sense so as to attract Section 500 IPC.

12. In the present matter the complainant has

contended that the said email was accessible to several persons and that the words used have lowered the reputation of the society and its office bearers. However, on perusal of the prima facie documents, I found that the email communication has to be read in full context. The same reflects strained relations and disagreement between the parties regarding vehicle transfer, NOC and handover. Mere use of accusatory or objectionable words in the course of such dispute, without sufficient prima facie material showing the necessary ingredients of defamation, cannot be treated as constituting the offence under Section 500 IPC at this stage.

13. In so far as the alleged offence under Section 504 IPC is concerned, there has to be intentional insult with intent or knowledge that such provocation will cause the person insulted to break the public peace or commit any other offence. I found that the email correspondence relied upon by the complainant does not prima facie disclose such intention or consequence. The words used in the communication, though unpleasant and capable of causing annoyance, appear to have been used in the course of an existing dispute about documents, NOC and transfer formalities. From the prima facie documents placed on record, I do not find material to show that the communication was intended to provoke breach of peace or commission of offence.

14. I also found that the complaint itself refers to civil proceedings between the parties. The documents produced on record indicate that the dispute has wider aspects concerning society handover, accounts, vehicle documents, infrastructure issues and administrative obligations. This circumstance also supports the prima facie inference that the controversy between the parties is rooted substantially in civil and contractual issues. The report submitted in inquiry under Section 202 Cr.PC. has also been perused. On overall reading of the said report together with the complaint, verification and prima facie documents, I found that no independent material indicating specific criminal activity has been brought on record. The material rather points towards an ongoing dispute between the housing society and the developer / its representatives in respect of bus documents, ownership, transfer and handover related matters.

15. Considering above all facts and the complaint, verification, inquiry report, written notes of arguments and prima facie documents produced by the complainant, I found that the allegations made in the complaint predominantly disclose a civil dispute. From the email communications and accompanying documents, nothing has prima facie come on record in respect of criminal activity so as to justify issuance of process for offences punishable under Sections 418, 500 and 504 read with Section 34 of the Indian Penal Code. In view of the above

discussion, I found that sufficient grounds do not exist for proceeding against the accused in the present complaint. Hence, proceed to pass following order:

ORDER

The complaint stands dismissed under Section 203 of the Code of Criminal Procedure.

Date – 31/03/2026

Sd/-
(Smt. A. S. Wadkar)
Civil Judge J.D., Karjat,
District - Raigad