

MHRG070010762023



CRI.M.A.NO.210/2023

Labdhi Garden Co-housing society Ltd.

Vs.

Labdhi Homes LLP

ORDER BELOW EXH.1

This proceeding is filed by the complainant invoking the provisions of Sections 170, 120-B read with Section 34 of the Indian Penal Code, along with an application under Section 91 of the Code of Criminal Procedure.

2. It is the contention of the applicant-complainant that the complainant is a Co-operative Housing Society. Accused No.2 is an employee of Lagdi Lifestyle Limited, and Accused No.3 is the Managing Partner of Accused No.1. It is further contended that on Survey Nos. 66/2 and 81/1 to 81/5, Accused No.1 has constructed 22 residential buildings. After sale of the flats therein, the present Co-operative Housing Society came to be formed, which is the complainant herein. Thereafter, the accused persons acquired adjacent plots situated near the said property on which the buildings of the complainant society are constructed, and commenced construction activities on

those plots. It is alleged that Accused Nos.1 and 3 have been using the internal roads of the complainant society for transporting heavy construction materials to access the said adjoining plots.

3. It is further alleged that the accused persons were plying heavy trucks on the internal roads of the complainant society, which not only posed a threat to the life and limb of the residents therein, but also caused damage to the internal roads of the society. Therefore, the complainant had filed a civil suit bearing R.C.C. No. 122/2022 before the competent Court and sought injunction. The Hon'ble Court, by order dated 05/12/2022, restrained Accused Nos.1 and 3 from using the internal roads of the complainant society for movement of heavy and commercial vehicles for transportation of construction material.

4. Being aggrieved by the said order, Accused Nos.1 and 3 preferred Miscellaneous Civil Appeal No. 3/2023 before the Hon'ble District Judge, Panvel, which is presently pending. It is the further contention of the complainant that, despite the subsisting restraint order, on 01/03/2023, Accused Nos.1 and 3, through Accused No.2 being their agent/servant, continued to transport building material by heavy vehicles in wilful disobedience of the order passed by the Court. Hence, the complainant has also initiated proceedings for breach of injunction, bearing

Miscellaneous Application No. 34/2023, which is pending for hearing and final disposal.

5. It is further alleged that on 16/07/2023, Accused No.2 attempted to bring heavily loaded trucks carrying construction material, including cement, into the premises of the complainant society. The watchman/gatekeeper objected to the entry of the said trucks. Thereupon, Accused No.2 represented that a Deputy Superintendent of Police had instructed him to allow entry of the said trucks. He contacted a person over mobile phone, claiming him to be a police officer, and attempted to pressurize the watchman. However, the gatekeeper, being aware of the restraint order passed by the Court, refused to permit entry of the said trucks and directed Accused No.2 to contact the society manager.

6. Thereafter, Accused No.2 allegedly contacted one police officer, namely P.I. Tendulkar of Neral Police Station, who, in a commanding tone, directed the society manager to allow entry of the trucks and allegedly threatened action in case of non-compliance. Despite being informed about the subsisting injunction order, the said person insisted on allowing entry of the vehicles.

7. According to the complainant, Accused No.2 misused the names and designations of police officers to facilitate entry of the trucks, thereby attempting to

overreach and violate the order of the Court and creating an impression that the police authorities were supporting such illegal acts.

8. It is further contended that Accused No.2 is an employee and agent of Accused Nos.1 and 3. The complainant lodged a written complaint on 18/07/2023 at Neral Police Station and thereafter also approached the Superintendent of Police, Raigad-Alibag, on 27/07/2023.

9. In the present matter, it is submitted that there is a necessity to call for the Call Detail Records (CDR) of the mobile numbers of Accused No.2 and the concerned police officer, as the same are essential for just, fair and proper adjudication of the matter. According to the complainant, such records would establish whether Accused No.2, in connivance with the said police officer, has committed offences by issuing threats and facilitating violation of the Court's order.

10. Therefore, in the present application, the complainant has prayed that, under Section 91 of the Code of Criminal Procedure, directions be issued to the concerned service providers to produce Call Detail Records of the mobile numbers of Accused No.2 and P.I. Tendulkar. Alternatively, directions be issued to the Superintendent of Police, Alibag, to collect and produce the said records. The complainant has also prayed for issuance of process under

Section 204 of the Code of Criminal Procedure against the accused persons for offences punishable under Sections 170, 120-B read with Section 34 of the Indian Penal Code.

11. Along with the complaint, the complainant has produced on record the following documents: copy of the Society Registration Certificate; copy of the Resolution authorising initiation of legal proceedings; copy of the order dated 05/12/2022 passed in R.C.C. No. 122/2022; photographs showing alleged breach of the said order; copy of complaint dated 18/07/2023 lodged at Neral Police Station; and copy of complaint dated 27/07/2023 submitted to the Superintendent of Police, Raigad-Alibag.

12. In the present proceeding, the learned predecessor of this Court had called for a report under Section 202 of the Code of Criminal Procedure. During the pendency of the matter, the complainant filed an application at Exhibit-9 and did not press Prayer Clauses (A) and (B) therein, which were in respect of calling for Call Detail Records. The police report submitted under Section 202 of the Code of Criminal Procedure is placed on record at Exhibit-11.

13. On perusal of the said report, it appears that the statement of Accused No.1 has been recorded, wherein he has denied having sent any heavy vehicles through the internal roads of the complainant society. Accused No.2, in

his statement, has stated that he was working with Labdhi Lifestyle Limited and that he has no concern with the Labdhi Homes project. He has further stated that he had visited the spot on a motorcycle and at that time the security personnel obstructed him, whereupon he contacted Accused No.1 as well as the police station.

14. From the order passed below Exhibit-5 in R.C.C. No. 122/2022, it appears that the defendants therein (who are Accused Nos.1 and 3 in the present matter) were temporarily restrained from using the internal roads of the buildings situated on Plot No. 81 for transportation of building material by heavy or commercial vehicles, till final adjudication of the suit. However, from the police report, it prima facie appears that vehicles belonging to Labdhi Lifestyle Limited had passed through the internal roads of the complainant society on 16/07/2023.

15. Upon careful perusal of the complaint, verification, documents placed on record, and the report submitted under Section 202 of the Code of Criminal Procedure, it emerges that the core grievance of the complainant pertains to alleged violation of the injunction order passed by the competent Civil Court in R.C.C. No. 122/2022. It is not in dispute that the said Civil Court, by order dated 05/12/2022, had restrained Accused Nos.1 and 3 from using the internal roads of the complainant society for transportation of construction material by heavy or

commercial vehicles. The material on record, including the police report, prima facie indicates that there may have been breach of the said order.

16. However, for such alleged disobedience of an injunction order, the law provides a specific and efficacious remedy before the Civil Court itself. The complainant has already availed such remedy by initiating appropriate proceedings for breach of injunction, which are stated to be pending adjudication. Apart from this, wilful disobedience of a Court's order may also attract proceedings under the law relating to contempt of Court.

17. In this background, the present complaint, which seeks to give a criminal colour to what is essentially a dispute arising out of alleged violation of a Civil Court's order, cannot be entertained unless the essential ingredients of the alleged penal offences are clearly made out. So far as the offence under Section 170 of the Indian Penal Code is concerned, there is no sufficient material on record to show that the accused had impersonated a public servant with intent to deceive or acted under the colour of such office. Similarly, the material placed on record does not prima facie establish any agreement between the accused persons so as to constitute an offence of criminal conspiracy under Section 120-B of the Indian Penal Code.

18. The allegations, even if accepted at face value,

indicate at the most an attempt to overreach or violate the order of the Civil Court, for which the complainant has adequate remedies under civil law, including proceedings for enforcement of injunction and contempt jurisdiction.

19. It is a settled principle that when a matter is predominantly of civil nature and adequate remedies are available under civil law, criminal process ought not to be invoked unless a clear case of criminal offence is made out. In the present case, such ingredients are conspicuously absent. Therefore, I found that no sufficient ground exists for proceeding against the accused under Section 204 of the Code of Criminal Procedure. 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