

**Madhosingh and Others Vs. Smt. Kamla Devi and Others**

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**Court :** Mumbai

**Decided On :** Oct-31-1991

**Reported in :** 1994(1)BomCR165; 1992CriLJ1858

**Judge :** B.U. Wahane, J.

**Appeal No. :** Criminal Application No. 461 of 1991

**Appellant :** Madhosingh and Others

**Respondent :** Smt. Kamla Devi and Others

**Advocate for Def. :** P.A. Deshmukh, A.P.P.

**Advocate for Pet/Ap. :** A.D. Vyawahare, Adv.

**Judgement :**

ORDER

1. This criminal application is directed against the order dated 4-3-1991 passed by the learned Judicial Magistrate, First Class, 6th Court, Nagpur in Criminal Case No. 373/89, rejecting the application of the applicants/accused to discharge them from the prosecution.

2. Smt. Kamla Devi wd/o Krishnalal Chawla, filed the complaint case u/Ss. 406, 409, 34 and 109 of the Indian Penal Code, against the present applicants and non-applicant No. 2 Shri Jagdish Singh. According to her, her husband, late Shri

Krishnalal Chawla was the member of 'Allied Employees Cooperative Housing Society Ltd., Anant Nagar, Nagpur' which is a registered society. After the death of her husband, the complainant was entered as a member of the said society by transferring the share of her husband in her favour.

3. In the year 1976, the society acquired a piece of land and prepared a layout. Complainant's husband was allotted a plot in the above said society, admeasuring 60' x 60' bearing plot No. 13, in the layout of the society, vide letter dated 10-8-1976 issued by the then secretary (Exh. 7). Since, according to the husband of the complainant, the plot No. 13 was not lucky number, he made a request to the society for change of the number and accordingly, his request was considered and the same plot No. 13 was renumbered as plot No. 12 and original plot No. 12 was renumbered as plot No. 13. The value of the plot was fixed at Rs. 12,200/-. The payment was made by instalments. The husband of the complainant the complainant, by 30-6-1991, paid Rs. 13,627.20 paise. The complainant made a request to the accused No. 1, after the death of her husband, to execute the sale-deed of plot No. 12. When the accused No. 1 failed to execute the sale-deed on one pretext or another, the complainant issued telegraphic notice on 5-10-1988, requesting the accused No. 1 to execute the sale-deed, but the accused No. 1 did not take any action in the matter.

4. Again in the month of April, 1989, the complainant approached the accused No. 1 for execution of the sale-deed. The accused No. 1 handed over a draft of the sale-deed, but the area of the plot has been shown as 1800 sq. ft. ((18.28) x 9 m = 164.52 sq. m.) in place of 3600 sq. ft. The value of the plot was also shown at Rs. 6,200/- only, though the complainant had paid Rs. 13,627.50. The complainant was compelled to issue notice through counsel on 4-4-1989, directing the accused to execute the sale-deed of plot No. 12 admeasuring 3600 sq. ft. Accused replied the notice vide reply dated 12-4-1989 denying the facts.

5. As the complainant smelled foul play on the part of the accused she lodged a report to Sadar Police Station, Sadar, Nagpur on 22-4-1989. But the police did not take any action and, therefore, she was constrained to file the complaint case. The complainant came to know that the accused No. 1 has executed a sale-deed for

Rs. 6,000/- in favour of Laxmisingh s/o Sumransingh Bundela in respect of 1800 sq. ft. of land of plot No. 12 of the complainant, vide sale-deed dated 10-3-1989. This area has been given number as plot No. 12A, In support of this fact, the complainant had filed the document on record as document No. 14. All the accused, being the members of the Managing Committee of the Society, they have divided the plot No. 12 of the complainant into two parts and half portion of the same is numbered as plot No. 12-A and has been sold to one Laxmansingh. According to the complainant, thus, the accused have committed offence under Ss. 406, 409, 34, 109 of the Indian Penal Code.

6. Shri Vyawahare, the learned counsel for the applicants/accused, took me through the provisions of S. 405 of the Indian Penal Code, which deals with the criminal breach of trust, and submitted that no property being entrusted to the complainant, the accused have not committed any offence. S. 405 of the Indian Penal Code, reads as under :

'Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly, misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'Criminal breach of trust'.'

This provision is restricted to the property only. The fact which has not been disputed before me is that the husband of the complainant was the member of the society and after his death, the complainant became the member. It is not disputed that the plot No. 12 was allotted to the complainant. It is also not disputed that she paid the amount of Rs. 13,627.50 paise. Therefore, the money and the property i.e. plot No. 12 was entrusted to the applicants/accused, who are the members of the Executive Committee. In spite of this, they deliberately handed over the draft of the sale-deed for the land admeasuring 1800 sq. ft. only. Thereby, they have not discharged the trust reposed by the complainant and willfully sold the half of the plot No. 12 to one Laxmansingh. Thus, satisfied the ingredients of S. 405 of I.P.C.

and thereby committed the offence punishable under S. 406, IPC.

7. The learned counsel for the applicants/accused, further submitted that as the dispute raised u/S. 91 of the Cooperative Societies Act by the complainant is pending, the proceedings under the Criminal Procedure Code is not maintainable. Reliance has been placed on a case reported in 1967 Criminal Law Journal, Note 34 State v. Vasant and a case : 1971 CriLJ1072 . The facts of both these cases are altogether different and, therefore, both these cases are not of any assistance to the applicants/accused.

8. The object of the criminal law is to protect the innocent and punish the guilty. It is not the function of the criminal court to do anything with the dispute relating to the property. It is the function of the civil courts to decide the disputes relating to the property. Where the dispute is of civil nature, a Magistrate ought not to deal with it. But, there is nothing in the law to prevent the criminal court from taking cognizance of the offence provided the ingredients of the offence are made out on the face of the complaint. Merely because the person concerned is subject to civil liability, the criminal complaint is not to be dismissed even if the civil remedy is tenable. In a case of Jaswantrao v. State of Bombay, : 1956 CriLJ1116 , Their Lordships observed that :

'The same set of facts may give rise both to civil liability and a criminal prosecution.'

8. In view of the above discussion, the application is dismissed.

9. Application dismissed.

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