

MHCC020165382019

Presented on : 11/10/2019.



Registered on : 11/10/2019.

Decided on : 07/05/2026.

Duration : 6 years, 6 months, 26 days.

IN THE COURT OF SESSIONS FOR GREATER MUMBAI,

BRANCH AT MAZGAON

CRIMINAL REVISION APPLICATION NO.1154 OF 2019

Kamlakar Ratnakar Shenoy,

Age : 60 years, Occ. : Business,

Residing at : 2/7, Kishor Kunj CHS,

Opp. Kalvarts Co., Shanti Path Marg,

Off Shivdas Chapsi Marg,

Mazgaon, Mumbai - 400 010.

... **Applicant**

V/s.

1. State of Maharashtra,

2. Madhukar Jawalkar,

Sr. PI. Housing Unit, EOW, Mumbai.

3. Parag Manere,

DCP, EOW, Mumbai,

Then Enquiry Officer.

... **Respondents**

Appearance :-

Applicant in person.

Ms. B. G. Pande, Ld. Addl. PP for respondents/State.

**CORAM : H.H. THE ADDL. SESSIONS JUDGE
MUJIBODEEN S. SHAIKH,
COURT ROOM NO.88.**

DATE : 7th MAY, 2026.

ORDER

1. This Criminal Revision Application is filed by the applicant/original complainant challenging the order passed by the learned Metropolitan Magistrate, 64th Court, Esplanade, Mumbai, dated 20/07/2019 in C.C. No.1704/Misc/2017 thereby dismissed the complaint under Section 203 of the Code of Criminal Procedure, 1973 (For short, 'the Cr.P.C.'). It is say and submit that the applicant herein has filed the complaint that the project of Galaxy Apartment, City Survey Nos.13/1, 13/2, 13/3, 13/4, 13/14 b, 13/16(p), 20 and 21(p) of Kurla Village III, Kurla East, Mumbai, was taken by HDIL. The complainant booked one flat in the said project. However, the said project did not have requisite sanction from the competent authority i.e. Slum Rehabilitation Authority (For short, 'the S.R.A.'). Despite of the legal sanction to the project, the Builder and Developer booked the flats as well as the HDIL sanctioned the loan by executing loan agreement dated 29/07/2015 and disbursed the loan of Rs.500 Crores on 09/10/2015. On the date of disbursement of huge loan amount, there was no Commencement Certificate issued by the competent authority. The Commencement Certificate was issued on 27/10/2015 to just two wings only and not for whole project. However, the loan was fully disbursed for total project. There was no loan application given by HDIL to Yes Bank Ltd. for grant of loan and same is reflected from the letter of Yes Bank Ltd. dated 12/07/2019 written to Ayub Sande, Inspector of Police, Nirmal Nagar police station. In the said letter, the Yes Bank's authorized signatory also admitted that the amount of Rs.500 Crores disbursed upto 09/10/2015. In the said letter, the bank authority has also admitted that date of issuance of sanction letter is 29/06/2015. Till today, the Occupation Certificate is not provided to

the occupants and without Commencement Certificate and Occupation Certificate of the building, the HDIL mortgaged the flats. The letter dated 18/10/2019 written by the Vice President of Yes Bank discloses that the bank has not received any formal written application for grant of loan from HDIL. It has also mentioned in the letter that at the time of sanctioning of the loan of Rs.500 Crores, all the flats in Project Galaxy were already sold by HDIL and only the balance receivables from sold flats/units were mortgaged vide Deed of Mortgage dated 29/07/2015. It is say and submit that the HDIL and Yes Bank in collusion with each other looted the public money by making illegal construction and handed over the possession of flat purchasers. The complainant has given complaint to Economic Offences Wing, Mumbai, for taking action against HDIL and Yes Bank. However, the E.O.W. has not taken the cognizance and killed the time in enquiry of the matter. From the facts and circumstances in the case, the cognizable offences made out against HDIL and Yes Bank, but the E.O.W. has not taken cognizance despite of the mandate of the Hon'ble Apex Court, the Hon'ble Bombay High Court as well as the Circular issued by the Director General of Police dated 17/02/2012. The learned Magistrate erred in passing the order of dismissal of complaint observing that the S.R.A. has initiated the prosecution against the developers for illegal construction and occupation under the provision of the Maharashtra Regional Town Planning Act, coupled with initiation of proceeding to evict the illegal occupants of the HDIL. The impugned order is illegal because the learned Magistrate has made applicable the principle that buyer must aware. The said principle is applicable in civil matters. Hence, this revision.

2. I heard the arguments of the applicant in person and

learned A.P.P for respondent/State. Perused the case papers.

3. The following points arise for my consideration and my findings thereon are given with the reasons stated below :-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the impugned order dated 20/07/2019 passed by the learned Magistrate is legal and proper ?	No.
2.	Whether interference at the hands of Revisional Court is necessary ?	Yes.
3.	What order ?	Criminal Revision Application is allowed.

REASONS

AS TO POINT NOS.1 TO 3 :-

4. The applicant in person has argued orally as well as filed on record written notes of arguments along with number of documents. He has raised the issue of illegal sanction of loan to HDIL by the Yes Bank Ltd. without a formal application of demanding the loan. So also, he raised the issue that HDIL entered into the agreement with purchasers of the flats though the Commencement Certificate by S.R.A. is not issued. The loan agreement is executed on 29/07/2015. On that day, no Commencement Certificate was issued to the Galaxy Project. The Commencement Certificate was issued on 27/10/2015 to just two wings and not for whole project. However, the loan of Rs.500 Crores is sanctioned and disbursed before the date of issuance of Commencement Certificate of the said project. Therefore, the complainant, being a Social Worker, raised this issue before various authorities including E.O.W., Mumbai. The officers of E.O.W. have

called upon the necessary information from the Yes Bank as well as HDIL and they have provided the information and given in writing by the bank that no application was given by HDIL for sanctioning loan. It is also admitted by the Yes Bank that total loan of Rs.500 Crores sanctioned and disbursed before the date of issuance of part Commencement Certificate. All these admissions are sufficient to hold that the HDIL and Yes Bank intentionally and deliberately misused the public funds of Rs.500 Crores. It is a fact of judicial notice and a common sense that any person wants the bank loan, then he has to apply for loan along with the necessary documents. If he wants to purchase the flat in any building then he has to submit the original sanctioned plan, necessary permission from the Government Authorities such as Town Planning, B.M.C., N.A. sanction letters along with the Commencement Certificate of that building issued by the competent authority. The bank used to take title search report of at least 50 years of the property and after scrutinizing all the documents minutely used to sanction the loan. But, here, in this case, no Commencement Certificate is issued. Before issuance of Commencement Certificate, construction of some of the buildings were completed and some of the flat purchasers illegally occupied the building. The Yes Bank authority without scrutinizing all necessary documents, sanctioned and disbursed huge amount of Rs.500 Crores. Therefore, prima facie, the HDIL and Yes Bank officers are involved in misusing the public funds for their personal gain. It can be inferred that Yes Bank officers might have sanctioned and disbursed the loan without following the rules and regulations for their vested interest. The E.O.W. officers have not taken cognizance on the complaint because the matter is pertaining to the development under the S.R.A. and as per the judgment of the Hon'ble Bombay High Court in Writ Petition No.924 of

2016 with Writ Petition No.486 of 2016, the matter is required to refer to High Power Committee - Slum Rehabilitation Authority, Bandra. However, from the facts and circumstances, it is crystal clear that the matter is not pertaining to complaints regarding the development under the S.R.A. scheme. But, the matter is altogether different and does not come under the purview of High Power Committee. The matters pertaining to irregularities in development under the S.R.A. scheme can be considered by High Power Committee. This matter is not pertaining to irregularities in implementing the S.R.A. scheme, but it is pertaining to misuse of public funds in collusion with the reputed builders and developers and the bank officers.

5. As per the judgment of the Constitution Bench of the Hon'ble Apex Court in **Lalita Kumari Vs. Government of U.P and others, (2013) 14 SCR 713**, **“Registration of FIR is mandatory if the information discloses commission of a cognizable offence. No preliminary inquiry is permissible in such a situation. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.”** The judgment of the Constitution Bench of the Hon'ble Apex Court is having binding effect as per Article 141 of the Constitution of India. However, the officers of E.O.W. avoided to register the F.I.R. under the garb of jurisdiction of High Power Committee as per the direction of the Hon'ble Bombay High Court in Writ Petition No.924 of 2016 with 486 of 2016.

6. Now, I have to consider about the protection available to the public servants under Section 197 of the Cr.P.C. When any person

who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction of the Central Government or the State Government, as the case may be. However, no sanction is needed for acts clearly outside the scope of duty, such as personal misconduct, criminal misappropriation or acts not directly connected with official duties. This protection ensures officials can perform duties without fear of frivolous prosecution, covering only acts with a direct connection to official responsibilities. However, the number of public servants using their official duty as a cloak to commit an illegal act for their vested interest. Here, in the case in hand, the bank officials of Yes Bank and HDIL Company by making conspiracy and committing fraud in the sanctioning of a loan to an illegal project and the loan is of huge amount of Rs.500 Crores. Such actions of bank officials of Yes Bank and HDIL Company involve intentional deception, forgery or conspiracy and in such case, the police officers are bound to register the F.I.R. and initiate an investigation. Here, number of forged documents for example, land titles, N.O.Cs. or sanction plans, Commencement Certificate are used to obtain the loan from the bank. The inducing delivery of property means or apply when a person fraudulently induced the bank to disburse money. Here, in this case, without Commencement Certificate to the project, HDIL Company induced on the officials of Yes Bank to disburse the loan. Here, HDIL Company and directors are the borrowers and bank officials in collusion with each other misused the public money and disbursed the loan to the illegal project. This act comes under Section 120-B of the Indian Penal Code (Criminal Conspiracy). If a loan is deliberately

sanctioned for a prohibited activity or unauthorized project, this constitutes fraudulent inducements and misuse of funds moving the case from civil dispute to criminal one. The registration of F.I.R. was must either in local police station or with specialized E.O.W. But, here, no such F.I.R. is registered.

7. Due to such activities of public servants and the officials of Yes Bank, the Yes Bank is facing number of problems and number of criminal cases. The bank's gross N.P.As. surged by 113% in just 18 months escalating from Rs.8,000 Crores in March, 2018 to Rs.17,134 Crores in March, 2019 alarming investors and regulators. All above facts are sufficient for the officers of E.O.W. to register the cognizable offences against HDIL Company as well as the officers of Yes Bank. But, the officers of E.O.W. for their vested interest, diverted the subject matter as dispute regarding the S.R.A. scheme and by taking disadvantage of judgment of the Hon'ble Bombay High Court in respect of forming High Power Committee to resolve a dispute of S.R.A. The act of officers of E.O.W. is nothing, but a clever ploy which they have played to save the directors of HDIL Company as well as the officials of Yes Bank and therefore, the act of officers of E.O.W. does not come under the act in discharge of their official duty and therefore, protection under Section 197 of the Cr.P.C. cannot be given to such officers. This test is futile as a public servant may very well use his official duty as a cloak to commit an illegal act and thereafter, contend successfully that the act may have been in exercising of official duty but nevertheless connected to his official duty. The Hon'ble Apex Court in **Om Prakash Yadav Vs. Niranjan Kumar Upadhyay, Criminal Appeal Nos.5267-5268 of 2024 (Arising out of S.L.P. (Crl.) Nos.8239-8240 of 2018 decided on 13/12/2024** held that, "Acts such filing a false case

and fabricating evidence would not fall within the scope of Section 197 of the Cr.P.C. as they are not a part of a official duties.”

8. The learned A.P.P for respondent/State has relied upon the following judgments :-

1. **Shailesh Gandhi Vs. State of Maharashtra and others, 2010 (2) Bom CR 408 ;**
2. **Sayed Anwar Ahmed and others Vs. State of Maharashtra, 2017 ALL MR (Cri) 4457 ; and**
3. **Tulsiwadi Navnirman (SRA) Co-Op. Hsg. Soc. Ltd. and another Vs. State of Maharashtra and others, 2009 (2) ALL MR 122.**

9. in **Shailesh Gandhi Vs. State of Maharashtra and others (supra)**, the Hon’ble Bombay High Court held that, “The Court directed the formation of a High Powered Committee to examine complaints and ensure proper investigation, emphasizing the need for transparency and accountability in public administration. The Court mandated that complaints involving criminality be investigated by appropriate agencies, ensuring that genuine slum dwellers are protected from exploitation.”

10. In **Sayed Anwar Ahmed and others Vs. State of Maharashtra (supra)**, the Hon’ble Bombay High Court held that, “The complaint primarily concerned eligibility issues under a Slum Rehabilitation Scheme, which should have been addressed by the High Power Committee established for such disputes.”

11. The judgments cited by the learned A.P.P. are not applicable to the case in hand because the complainant has not raised the issue of illegal construction, but he has raised the illegal acts committed by the directors of HDIL company and senior officers of the Yes Bank who by making conspiracy, sanctioned the loan of Rs.500 Crores to the illegal project which is apparently proved from the documents as discussed by me above.

12. After having been considered the entire facts and circumstances, it becomes crystal clear that the order of the learned Magistrate is apparently incorrect because the learned Magistrate has also wrongly held that the action against HDIL company has been taken by the S.R.A. for illegal construction and therefore, there is no need to take any cognizance in the complaint. This complaint is not pertaining to illegal construction, but it is pertaining to illegal acts committed by HDIL and the officials of Yes Bank by sanctioning loan without application as well as by disbursement of loan of Rs.500 Crores without verifying the Commencement Certificate of the project. Therefore, the impugned order of the learned Magistrate is perverse. Therefore, the interference of the Revisional Court is necessary.

13. The officers of E.O.W. have willfully failed to perform their duties by registering the F.I.R. against HDIL and officers of the Yes Bank who have granted loans to HDIL as well as to the flat purchasers in the illegally constructed project which did not have Commencement Certificate from the competent authority at the time of granting bank loans and thereby endangering the public money and causing breach of trust of innocent persons and they were induced to believe that the project has all permissions with dishonest intention to cause wrongful

gain to others. Therefore, I hold that the respondents herein have committed the offence under Sections 217 and 218 of the Indian Penal Code. Thus, I answer the points accordingly and proceed to pass the following order :-

ORDER

1. Criminal Revision Application No.1154 of 2019 is allowed.
2. The impugned order passed by the learned Metropolitan Magistrate, 64th Court, Esplanade, Mumbai, dated 20/07/2019 in C.C. No.1704/Misc/2017, is quashed and set aside.
3. The learned Magistrate is hereby directed to restore the proceeding bearing C.C. No.1704/Misc/2017 and pass issue process order under Section 204 of the Cr.PC. for the offence punishable under Sections 217 and 218 of the Indian Penal Code against the respondents – officers of E.O.W. Mumbai, and proceed further as per law.
4. Proceeding is closed.
5. Criminal Revision Application No.1154 of 2019 is disposed of accordingly.



(Mujibodeen S. Shaikh)
Addl. Sessions Judge,
Sessions Court, C.R. No.88,
Mazgaon, Gr. Mumbai.

Date : 07/05/2026.

Directly typed on computer on : 06 and 07/05/2026.
Checked on : 07/05/2026.
Signed on : 07/05/2026.

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”		
Upload Date	Upload Time	Bahushruta Y. Jambhale Name of Stenographer
07/05/2026	4.50 p.m.	
Name of the Judge (With C.R. No.)	HHJ SHRI MUJIBODEEN S. SHAIKH (COURT ROOM NO.88)	
Date of Pronouncement of JUDGMENT / ORDER	07/05/2026	
JUDGMENT / ORDER signed by PO. on	07/05/2026	
JUDGMENT / ORDER uploaded on	07/05/2026	