

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.855 OF 2014

Vinayak Narsingrao Kinolkar .. Petitioner

Versus

Madhavrao Bapurao Dhole .. Respondent

Mr.P.R.Katneshwarkar, Advocate for the petitioner.

CORAM : SMT.SADHANA S. JADHAV,J.

DATED : 10.04.2015

PER COURT :-

1. Heard learned counsel for the petitioner. Rule returnable forthwith.

2. The petitioner herein is an original accused in RCC No.166 of 1999 pending before the Judicial Magistrate, First Class, Basmatnagar. The petitioner herein submits that the complaint was filed before the learned Judicial Magistrate, First Class, Basmatnagar alleging therein that the respondent herein had forged certain document more particularly the 7/12 extract of Gat No.271, situated at Mauje Wakhari. The complaint was filed on 16.08.1996. The learned Magistrate vide order

dated 19.09.1997 was pleased to dismiss the complaint, in view of the fact that the accused was a public servant and there is no sanction to prosecute him. The complainant had carried the matter in revision and Revisional Court had remanded the matter.

3. By an order dated 14.06.1999 the learned Judicial Magistrate, First Class, Basmatnagar, had observed that the concerned Muster Clerk had destroyed the documents of C-file in spite of showing in the roznama alongwith D-file documents. Hence documents shown as C-file were not available in the record. It is pertinent to note that they are the same documents which were disputed documents. The learned Judicial Magistrate, First Class had issued show cause notice to the concerned clerk.

4. The complainant had filed an application before the learned Judicial Magistrate, First Class praying therein that he had initially filed the disputed documents on record and had also filed the photocopy of the said documents. By that application the petitioner has prayed to take on record the certified copy. In view of this he had withdrawn the application seeking the relief of taking on record the photocopy of the disputed document. The certified copies of the disputed documents

were hence taken on record. The complainant had filed an application seeking the relief that the documents below Exhibit list-20 and certified copy of the 7/12 extract may be exhibited. The learned Judicial Magistrate, First Class, Basmatnagar, vide order dated 21st October, 2013, was pleased to observe that the disputed documents are public documents and hence had exhibited the documents as Exhibit Nos.166 & 167 respectively. The petitioner herein questions the correctness and validity of the said order.

5. It is pertinent to note that the complainant had not filed any application under Section 65 (i)(c) of the Indian Evidence Act, 1872. The disputed documents filed with the complaint were destroyed by the concerned clerk and certified copies were taken on record. In fact, it prima-facie appears that the documents have been exhibited only for the purpose of identification. It need not be presumed that exhibiting the document would tantamount to proving the document.

6. The objection can be considered at the time of recording substantive evidence. The learned counsel fairly submits that the admissibility of the said documents can be considered at the time of substantive evidence. The onus of proving the said documents would be on the complainant and hence it is not necessary to

interfere with the order after observing that the said documents are exhibited only for the purpose of identification. Rule made absolute. The criminal writ petition stands disposed of in the above terms.

[SMT. SADHANA S. JADHAV,J.]