

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
**CRIMINAL WRIT PETITION NO. 999 OF 2015**

|                          |     |            |
|--------------------------|-----|------------|
| Navaj Kasam Shaikh       | ... | Petitioner |
| vs.                      |     |            |
| The State of Maharashtra | ... | Respondent |

Mr. S.V.Kotwal i/b. Mr. Ashish Sawant, Advocate for the petitioner.  
Ms. A.A.Mane, APP, for the State.

**CORAM: SMT.SADHANA S.JADHAV,J.**  
**DATE : 8th October, 2015.**

**P.C.**

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioner herein happens to be the original complainant. The petitioner filed a complaint before the Judicial Magistrate, First Class, Karmala, alleging therein that the petitioner happens to be the owner of House No.455 at Karmala. Similarly, he also owns the property at Majalgaon, District Beed. That in the year 2005, he had shifted to Majalgaon, Beed. Before leaving for Majalgaon, he had met the accused Samir Shaikh, who is also a resident of Karmala. That the complainant had reposed faith in Samir Shaikh. According to the complainant, Samir Shaikh i.e. the accused had informed him that he would be able to sell House no.455 for an amount of Rs. 8 to 10 lakhs as he is also dealing in real

estate. That he had got executed a power of attorney to look after the said property. Since the petitioner/complainant had reposed faith in him, he had executed a power of attorney in favour of the accused on 6.7.2005. The accused had also informed the complainant that he would deposit the amount of the sale proceeds in Urban Bank at Karmala. Subsequently, it was noticed that the accused had not sold the property, but had prepared a forged document with the aid of one stamp vendor at Solapur namely Mahendra Aurgngabadkar. That the said stamp paper was prepared showing that the complainant had received an amount of Rs.9 lakhs. In fact, the complainant had not received a single farthing. Both the accused Samir Shaikh and Amir Shaikh had prepared forged documents and had claimed ownership over the property House No.455.

3. That Samir Shaikh filed a Civil Suit in the Court of Civil Judge, Senior Division at Barshi against the present petitioner/complainant, which is registered as Special Civil Suit No.50 of 2014. The suit is filed for specific performance of the agreement to sale. According to the complainant, it was only after filing of the civil suit, that the complainant had learnt that there is agreement for sale of the said property in favour of Samir Shaikh. The complainant had realized that he has been cheated by

the accused on the basis of a power of attorney executed in his favour. The complainant therefore was constrained to file the complaint before the J.M.F.C., Karmala. The complainant had prayed for direction under Section 156(3) of Cr.P.C.

4. The learned Magistrate, upon perusing the contents of the complaint, had not issued directions under Section 156(3) of Cr.P.C., but had put up the complaint for verification. Being aggrieved by the said order refusing directions under Sec. 156(3), the petitioner herein had filed Criminal Revision Application No.92 of 2014 before the District Judge at Barshi. The revisional Court has dismissed the revision application by an order dated 3.1.2014. The Revisional Court had observed that the Magistrate can under Section 190 of the Code before taking cognizance ask for investigation by the police under Section 156(3) of the Code. The Magistrate can also issue warrant for production before taking cognizance. If after cognizance has been taken and the Magistrate wants investigation, it will be under Section 202 of the code. It is a matter of record that the Magistrate had put up the complaint for verification. The Magistrate had only expressed an opinion that the Magistrate may take cognizance but had not taken cognizance of the complaint by putting up the complaint for

verification. In any case, it would be a discretion of the Magistrate and the complainant cannot insist upon a direction under Section 156(3) of Cr.P.C.

5. The learned counsel for the petitioner rightly submits that the complainant herein had filed an application under the RTI and the complainant had received a report that the Stamp bearing No. GT 389953 was purportedly executed on 7.6.2006, but however, it appears from the records of the District Treasury that the said stamp paper was given to the same vendor Mahendra Aurangabadkar on 6.6.2013. The complainant had received this information from the Information Officer of the District Treasury, Solapur. According to the complainant, the offence is committed not only against the complainant, but it is against the State since the non-judicial stamps have been forged and fabricated by the accused. The learned counsel rightly submits that it is a serious offence. It is also rightly submitted that in these circumstances, the complainant would not be in a position to substantiate the charge of forgery and fabrication at the instance of the stamp vendor, by the accused.

6. This Court is of the opinion that in the given facts and circumstances, the learned Magistrate ought to have called for a report under Section 202

of Cr.P.C.

7. During the enquiry under Sec.202 of Cr.P.C. if it would surface that the accused have committed an offence of forgery and fabrication, the State would be at liberty to prosecute the accused independently as it would be an offence against the State. At this stage, it would not be proper to direct the Magistrate to pass an order under Section 156(3) of Cr.P.C.

8. The learned counsel submits that this is not a case of civil dispute between two parties, but the accused have committed offences against the State by fabricating the documents and the accused have also committed an offence of forgery. The Magistrate has put up the complaint for verification to ascertain as to whether the verification is in consonance with the complaint and whether the statement on oath inspires confidence. The Magistrate shall record the verification statement of the complainant on oath and then direct an inquiry by a police officer under Section 202 of Cr.P.C.

9. The State would be at liberty to file independent prosecution against the accused in the eventuality that it is revealed that the accused have committed an offence punishable under Sections 467, 468, 471 read

with Sec. 34 of IPC. The order passed by the Revisional Court does not call for any interference. However, the learned Magistrate shall take appropriate steps as directed by this Court hereinabove.

10. With these directions, Writ Petition is disposed of.

**(SMT.SADHANA S.JADHAV, J.)**