

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2582 OF 2014

Amarjeet M. Ranu

... Petitioner.

V/s.

Powai Cosmopolitan C.H.S. Ltd., & Ors.

... Respondents.

Mr. A.M. Ranu, the Petitioner in-person is present.

Mr. P.P.Runwal, Advocate for the Respondent No.3.

Ms. A. A. Mane, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 10th MARCH, 2015

P.C. :

1 Admit. Heard finally.

2 Heard the applicant in-person. The applicant is facing trial for the offence punishable under section 406 of the Indian Penal Code in complaint no.37/SW/2006 at the instance of the respondent no.3. Perused the impugned orders dated 19.11.2012 and 04.07.2013 and the order passed by the learned Additional Sessions Judge. Respondent No.3 wanted to lead secondary evidence in support of his case/complaint, as the original documents were allegedly in possession of the petitioner. The said application was allowed by the learned

trial Magistrate. Thereafter, the petitioner took objection to the said order. The learned Magistrate after hearing both the sides, maintained the earlier order. Said order was challenged before the Sessions Court by way of revision application by the petitioner. The revision application has also been dismissed.

3 It appears that the order, permitting the secondary evidence was based without their being an affidavit of respondent no.3 in support of his claim that original documents were in possession of the petitioner. In view thereof, I am inclined to set aside both the orders of the learned Magistrate and the order passed by the additional Sessions Judge.

4 Accordingly, both the orders impugned and described herein-above passed by the learned Magistrate and the order passed by the Sessions Court in criminal revision application no. 712 of 2013 are hereby set aside.

5 Learned Magistrate is directed to re-hear the application in case respondent no.3 Suresh Medhekar files affidavit in support of his application for grant of permission to lead secondary evidence.

6 It is made clear that if the said application is resisted by the petitioner, he shall also be directed to file affidavit, rebutting the claim of respondent no.3.

7 The writ petition stands disposed of in the above terms.

(JUDGE)

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