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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3475 OF 2015

Smt. Usha Dattatray Nagarkar

..Petitioner.

V/s.

State of Maharashtra

..Respondent.

Mr.Kuldeep S. Patil for the petitioner.

Mrs.M.M. Deshmukh, APP for respondent-State.

CORAM : V.L.ACHLIYA, J.

DATED : 2ND DECEMBER, 2015

P.C.:-

1. Heard learned counsel for the petitioner and learned APP for the State.

2. By this petition, the petitioner has challenged the order dated 30th June, 2015 passed below Exhibit-79 in C.C.No.78/PW/2008 by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai whereby the application moved by the prosecutor to lead secondary evidence was allowed. The order is impugned mainly on the ground that the eventualities as contemplated under section 65 of the Evidence Act are not satisfied so as to grant leave to prosecution to lead secondary evidence.

3. The submissions advanced by learned counsel cannot be accepted as the order passed by the learned Metropolitan Magistrate is a well reasoned order. It is admitted fact that the complainant and accused No.1 were partners in respect of which forged and fabricated Deed of Retirement is alleged to be made. It is not disputed that the prosecution had called upon accused No.1 to produce the original Deed of Partnership which accused No.1 failed to produce. In view of the fact that the original Deed of Partnership lying in the custody of accused No.1 was not produced, the learned Magistrate was fully justified in allow the prosecution to lead secondary evidence i.e. attested true copy of the Deed of Partnership which was obtained from the office of the Assistant Commissioner of Customs during the course of investigation and produced in evidence as evidence. Thus, there appears to be no illegality in the order passed by the learned Metropolitan Magistrate. The order is passed in consonance with section 65 of the Evidence Act. The petition is devoid of any substance and merits therein. Accordingly, petition is rejected.

(V.L.ACHLIYA, J.)