

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

CRI. WRIT PETITION NO. 4880 OF 2014

Jehangir Ardeshir Rabadi ... Petitioner.

V/s.

Abbas Shabbir Kanchwala and Others. ... Respondents.

Mr. S. S. Manjrekar, Advocate for the Petitioner.

Mr. A.R. Patil, APP for the State.

**CORAM : M.L.TAHALIYANI,J.
DATE : 20th FEBRUARY, 2015**

P.C. :

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

2 The petitioner is the original complainant in Criminal Case No. 45/PW/2008, pending in the court of Metropolitan Magistrate, 18th Court, Girgaum, Mumbai. The petitioner is aggrieved of the order passed by the learned Magistrate, rejecting the application filed by the prosecutor to recall PW -2 and the order of the Sessions Court, dismissing the revision application on the ground of maintainability.

3 Without going to the maintainability or otherwise of the revision application, what is necessary to be examined is

as to whether the prosecution had made out a case for recall of PW-2. PW-2 is a Notary who alleged to have notarized the alleged forged gift deed. The petitioner wants PW-2 to be recalled to bring further evidence in view of the further statement of PW-2 recorded by the police. The petitioner wants to prove that the PW-2 had signed the gift deed in the absence of donor. It may be noted here that further statement is a part and parcel of the charge-sheet and it was the duty of the prosecution to examine the witness, keeping in view all the statements of the witnesses recorded by the police. Moreover, the witness has admittedly stated in his earlier evidence that the gift deed was notarized by him when the donor was not present. In view of this, I do not think that the recall of the witness was necessary.

4 I have read the order of the learned Magistrate. It seems that this witness was earlier recalled and was further examined. This is evident from para 6 of his evidence. Moreover, as already stated, the witness has categorically stated that the donor was not present and his signature was already there on the document which was notarized by him.

5 In these circumstances, there is no substance in the petition. Writ Petition stands dismissed summarily.

(JUDGE)