

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.665 OF 2016

Navneet Vrandavanlal Pittie

... Petitioner

Vs.

The State of Maharashtra

... Respondent

Mr.Subodh Desai i/b Hrishikesh Chavan for the Petitioner

Ms.Anamika Malhotra, APP, for Respondent – State

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: DECEMBER 2, 2016

P.C.:

1. Heard.
2. Rule. By consent of the parties, Rule is made returnable forthwith and heard finally.
3. This criminal Writ Petition is filed directing against the order dated 25.3.2015 passed by the Metropolitan Magistrate, 8th Court at Esplanade, Mumbai in Case NO.500/PW/2011 and also against the order dated 20.10.2015 passed by the learned Sessions Judge in Criminal Revision Application No.660 of 2015. The applicant is prosecuted for the offence punishable under sections 465, 468, 471, 420 r/w section 34 of the Indian Penal Code before the Metropolitan Magistrate. There was an issue of

payment of cess to the tune of Rs.4,81,28,403/- for a building which is in Tamarind Lane, Fort. One Kamlabai was the owner of the building and the present petitioner is a grandson of Kamlabai. Kamlabai bequeathed the building to her great grandson, namely, Parikshit, who is the grandson of Murarilal Pittie and son of Ambareesh Pittie. In 1999, Parikshit Ambareesh Pittie was a minor. He became a major in 2015. The present petitioner is thus the paternal uncle of Parikshit. Kamlabai has appointed the petitioner Navneet, one Ashok Jalan son in law of Kamlabai, Murarilal – grandfather of Parikshit, as executors of her will. The will was probated in 2004. Murarilal died in 2010 and so father, Ambareesh, was brought on record as legal guardian of Parikshit, who is the owner of the building. There is a demand of cess of Rs.4,81,28,403/- from the owner of the building by the Corporation. A letter was written to the Mumbai Municipal Corporation by one P.S. Indalkar, Section Officer of the Housing Department of the Government, in which the Government communicated to the Corporation that the building of Kamlabai in Tamarind Lane is exempted from cess. On verification by the Corporation, it is found that this letter was forged and hence, a case was registered against the petitioner, one Murarilal Pittie, Mr.J.P. Thakkar who was the liaisoning officer and the petitioner who was paternal uncle of Parikshit and the father of the petitioner Mr.Vrandavanlal Pittie. After filing of chargesheet, the petitioner filed discharge application under sections 239 of the

Criminal Procedure Code before the learned Magistrate which was turned down, so the revision was preferred and the order of the learned Magistrate was confirmed by the learned Sessions Judge and hence, this Writ Petition.

4. Mr.Desai, the learned Counsel for the petitioner, has submitted that there is no evidence against the petitioner/accused. Though the offence is made out, no role is attributed to the petitioner. He is innocent and there is no material before the Metropolitan Magistrate so that the charge can be framed. The orders passed by the learned Metropolitan Magistrate and the learned Sessions Court are to be set aside and the petitioner be discharged. He further submitted that the petitioner in fact was not in picture after the will was probated as his role of an executor was over. He was neither the owner nor the beneficiary of the property. The property was transferred in the year 2006 in the name of Parikshit.

5. Learned Prosecutor has opposed the petition. She relied on the contents in the L.C. Suit No.7 of 2000 filed by Murarilal, Ashok Kumar Jalan, who were the executors of the will. She submitted that this Suit was filed against the Corporation by the executors in respect of recovery and levying of cess on the said building. She relied on the averments in paragraphs 7 and 10 of the plaint, wherein it was mentioned that plaintiff No.3, i.e., the present petitioner, was looking after the affairs of the suit property. She submitted that the police have collected evidence that the

co-accused Thakkar has sent the correspondence i.e., about 8 to 9 letters to the Corporation which is based on forged letter stating that the building is exempted by the Government from cess. She submitted that the petitioner was actively involved in getting the building exempted from paying cess and the forged letter dated 9.4.2004 also pertains to the exemption from cess. She relied on the statement of P.S. Indalkar which is recorded by the police under section 161 of the Criminal Procedure Code who has denied his signature and also writing of such letter. The report of the fingerprint expert is still awaited.

6. Perused all the documents and considered the submissions of the learned Counsel and the learned APP. *Ex facie*, the offence of forgery is made out. The petitioner was appointed as one of the executors. He is paternal uncle of the beneficiary. He was also a caretaker of the building. The facts that the suit was filed by him and other two executors in respect of asking exemption from payment of cess of the building and the forgery is committed with a view to get exemption from cess appear connected. It is not a case of absence of evidence but there is some evidence against the accused so I am of the view that under such circumstances, it is not a fit case to discharge the accused.

7. Hence, the Writ Petition is dismissed. Rule is discharged.

(MRS.MRIDULA BHATKAR, J.)