

Anand

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

WRIT PETITION NO.2586 OF 2016

Prashant Nanji Rajput .Petitioner

Vs.

The State of Maharashtra & ors. .Respondents

Mr.N.J.Patil i/b. Mr.M.Shetty, Advocate, for the
Petitioner

Ms Anamika Malhotra, APP, for the Respondent
No.1 – State

Mr.S.Kotwal i/b. Mr.A.Ghatge, Advocate, for the
Respondent No.2

Mr.N.Mundargi i/b. M/s.Tamhane & Co., Advocate,
for the Respondent Nos.3, 5 & 6

Mr.Amit Potnis, Advocate, for the Respondent
No.4

CORAM : REVATI MOHITE DERE, J.

DATE : 14.10.2016

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has
impugned the order dated 28.08.2015 passed by
the learned Addl. Chief Metropolitan Magistrate,
11th Court, Kurla, Mumbai in C.C.No.119/SW/2015,
as well as the order dated 22.06.2016 passed by

the learned Additional Sessions Judge, Greater Mumbai in Cri.Revn.Appln.No.1150 of 2015.

3. Learned counsel for the Petitioner submits that considering the nature of allegations made in the complaint, the learned Magistrate ought to have passed an order under Section 156(3) of the Code of Criminal Procedure. He submitted that the nature of allegations made in the complaint are such, that it warrants police investigation. He submits that even the Revisional Court has erred by not setting aside the impugned order.

4. Learned counsel for the Respondents state that the only allegation in the complaint is that a false statement was made by the Respondents, pursuant to which the property was sold/alienated. They submit that no interference was warranted in the impugned orders and the learned Magistrate has rightly exercised its

discretion, and that the same has been confirmed by the Sessions Court in Revision.

5. The impugned order dated 28.08.2015 reads thus :-

" ORDER BELOW EXHIBIT - 01

On perusal of record and heard. The counsel for complainant as submitted that the complainant is the beneficiary of the trust and the property in question have been transferred to Vakratund Realtors proposed accused no. 02 vide sale deed. As such there is no reason for sending the reason for investigation U/s. 156 of Cr.P.C. However, liberty is granted to complainant to pursue as a complaint and hence matter be kept for verification and if required for matter can be sent for investigation U/Sec.202 of Cr.P.C."

6. The learned Magistrate after going through the papers has exercised his discretion and has not sent the complaint for investigation under Section 156(3) of the Code of Criminal

Procedure. However, as is evident, liberty was granted to the Petitioner (Original Complainant) to pursue his complaint and accordingly kept the matter for verification. It was also observed that if required, the matter can be sent for investigation under Section 202 of the Code of Criminal Procedure.

7. Perused the complaint and the impugned orders. The allegations in the complaint are essentially with regard to alienation of the property, on the basis of the false statement made by the Respondents. No interference is warranted in the discretion exercised by the trial Court.

8. Accordingly, the Petition is dismissed.

9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in

accordance with law, uninfluenced by the observations made in this order.

All contentions of the Petitioner are kept open.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)