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

CRIMINAL WRIT PETITION NO.3212 OF 2016

Brian Anthony Fernandes	...Petitioner
Versus	
The State of Maharashtra and Ors.	...Respondents

Mr.Gaurav Parkar, for the Petitioner.

Mr.V.V.Gangurde, A.P.P for the Respondent-State

Mr.Robin Thomas, for Respondent Nos.2 to 6.

Ms.Irine D'lima, for Respondent Nos.7 and 8.

CORAM : REVATI MOHITE DERE, J.
DATE : 5th OCTOBER, 2016

P.C. :

1. Heard learned Counsel for the parties.

2. By this petition, the petitioner has impugned the Order dated 2nd September, 2016, passed by the learned Judicial Magistrate First Class, Vasai, in R.C.C.No.35 of 2012, by which his prayer for exhibiting the report under Section 202 of the Code of Criminal Procedure came to be rejected.

3. Learned Counsel for the petitioner states that the petitioner had filed a private complaint on 12th January, 2012, before the learned JMFC, Vasai, alleging offences under Sections 467, 468, 471 r/w 34 of the Indian Penal Code. He submitted that the learned Magistrate vide order dated 21st March, 2012 had directed the police to carry out a detailed investigation under Section 202 of the Code of Criminal Procedure, pursuant to which, the police filed a report on 6th November, 2012, stating therein, that an offence under Section 420 r/w 34 of the Indian Penal Code was made out. He further submitted that thereafter on 18th January, 2013, the police submitted another report annexing the letter of NSDL dated 2nd November, 2012. He submitted that a copy of the PAN application form and other supporting documents were enclosed to the said letter sent to the Police Inspector, Vasai Police Station. He submitted that all the documents were part of the 202 report which was filed before the learned JMFC, by the Police Inspector, Vasai Police Station. According to the learned counsel, considering the report filed by the Investigating Officer, the learned JMFC issued process against the respondent nos.2 to 8. He submitted that thereafter, evidence before charge commenced. The petitioner examined himself, his brother and an officer of the RBI and that the said witnesses

were cross examined by the Respondent Nos.2 to 8 (original accused). According to the learned counsel thereafter the Investigating Officer stepped into the witness box and presently his examination-in-chief is being conducted by the petitioner's advocate. He submitted that during the course of recording of his evidence i.e. examination-in-chief, the Investigating Officer admitted that an enquiry under Section 202 was conducted by him and a report was filed in the trial Court. He submitted that the Investigating Officer had also admitted the contents of the documents. Learned Counsel for the petitioner submitted that the learned Judge ought to have permitted the petitioner's advocate to exhibit the said report, which was filed by the Investigating Officer under Section 202 of Cr.PC.

4. Learned Counsel for the respondents nos.2 to 6 and learned counsel for the respondent nos.7 and 8 opposed the petition. They submitted that the statements of the witnesses in the 202 report as well as the documents therein cannot be exhibited. They submitted that only the report under Section 202 of Cr.PC., can be exhibited and not the statements and documents therein.

5. Learned Counsel for the petitioner states that he is only praying that the 202 report be taken on record and exhibited, subject to objection which can be finally decided at the time of passing final orders. He submitted that he is not insisting that the statements and the documents in the 202 report be exhibited separately.

6. Considering the aforesaid, the report filed under Section 202 of Cr.PC be put to the said witness – Prakash Jadhav and the same may be exhibited, subject to objection, which will be decided finally by the trial Court at the time of passing final orders. It is made clear that the statements as well as documents in the said report cannot be exhibited separately through the Investigating Officer.

7. The petition is allowed to the extent aforesaid and is accordingly disposed of.

8. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.