

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4316 OF 2015

Samuel Manvel Dsouza

Petitioner

versus

State of Maharashtra and others

Respondents

Mr.Vishal Kanade i/by J.P.Consultia for Petitioner.

Mr.J.P.Yagnik, APP, for State.

CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.

DATE : 9th August 2016

PC :

1. Heard. Petitioner seeks a direction to investigate the complaint lodged by him by registering a first information report ('FIR') for offences punishable under Sections 468, 420, 470, 471 of Indian Penal Code and under Sections 81 and 82 of Indian Registration Act, 1908.

2. In short, Petitioner's contention is that he is the co-owner of the subject property as described in the conveyance deed annexed at page 35 of the paper book. By the said conveyance deed, the said property was sold in favour of Mohammed Ashfaq Chhawniwala on 31 December 2013. The conveyance deed was registered in the office of Sub Registrar, Borivali.

3. The Petitioner by a communication dated 4 December 2014 (Exhibit-I), addressed to the Inspector General of Registration and Controller of Stamps and Deputy Inspector General of Registration, raised his grievance.

4. The Petitioner has placed reliance on information received by him on an application made under Section 6(3) of Right to Information Act, 2005 in respect of subject transaction of execution of conveyance deed. Clause-13 of the said information refers to an endorsement made by an official of the Sub Registrar's office to the effect that persons at serial numbers 12 to 15 and 20 to 30 mentioned in the deed of conveyance, were not present at the time of execution of the conveyance deed. Hence, execution of the conveyance deed could not be registered to their extent.

5. The Petitioner filed a complaint addressed to the Police Inspector, Charkop Police Station, Charkop dated 13 October 2014 stating therein that his signature was forged and somebody has affixed his photograph and got the conveyance deed registered.

6. Learned APP, on instructions of the police officer present in the Court, states that this complaint was investigated by Police. By a communication dated 31 August 2015, the Senior Police Inspector, Charkop Police Station communicated the Petitioner that he does not find any substance in the said complaint meaning thereby that the complaint filed by the Petitioner was closed.

7. This petition was heard on the earlier occasion. By order dated 26 April 2016, we observed as under :

"1. Learned Prosecutor to take instructions as to whether before closing the investigation, the Investigating Officer had verified as to whether the subject signatures on the questioned sale deed were forged.

2. Learned Counsel submits that he has obtained an Expert Report from a private hand-writing expert which concludes that the questioned signatures were not of petitioners."

8. Learned APP submits that the investigating officer still maintains the same stand as was disclosed in communication dated 31 August 2015, Exhibit-M, Page 283 of paper book.

9. It is disturbing to note that the investigating officer seems to have lost sight of the observations made in the order dated 26 April 2016. Nothing is placed on record to show that private hand-writing expert's report produced by the Petitioner in respect of alleged forged signature, was looked into by the investigating officer before forming his opinion to close the complaint of the Petitioner. Even otherwise, prima facie, we find that the Petitioner had placed before the investigating officer reasonable material at least to register a FIR, which has not been done for the reasons best known to the investigating officer. Learned APP submits that FIR has been registered against Petitioner consequent upon an order passed by Magistrate under Section 173 of Code of Criminal Procedure, 1973 on the complaint lodged by opponents of the Petitioner and investigation is going on in the said FIR. We are not concerned with other proceeding which is pending investigation.

10. Considering the material placed on record and the submissions advanced, we are of the view that the complaint lodged by the Petitioner ought to have been registered as a FIR.

11. We direct the Respondents-State to register the complaint as FIR. We direct that investigation therein shall be conducted under the supervision of Respondent no.3 Deputy Commissioner of Police, Zone-XI, Borivali. The investigation shall not be carried out by the officer who had looked into the matter and had issued communication dated 31 August 2015, Exhibit-M. The investigation shall be conducted by a senior police official. The Respondent no.3 shall accordingly issue necessary instructions.

12. The investigation shall be completed at the earliest and on its own merits. It is made clear that we have not expressed any opinion on the merits of the complaint filed by the Petitioner.

13. With the above directions, Writ Petition No.4316 of 2015 stands disposed of.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)