

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2232 OF 2015

M/s. Disha Infrastructure

.....Petitioner

V/s.

State of Maharashtra and 2 Ors.

.....Respondents

* * * * *

Mr. Pankaj J. Das, Advocate for the petitioner.

Mr. S.R. Agarkar, APP for respondent

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 14th FEBRUARY, 2017.

P.C. :-

1). This petition is directed against the order dated 9th December, 2014 by which the Sessions Court, Pune allowed Criminal Revision Application No. 391 of 2014 filed by respondent no.2 and set aside the order dated 5th May, 2014 passed by the trial Court directing further investigation under Section 173(8) Criminal Procedure Code ("Cr.P.C." for short) with respect to the documents described in para-15 of the private complaint filed by the petitioner. The documents referred to at para-15 of the complaint, are sale-deed, a development agreement and power of attorney between

respondents no.1 and 2 and the owners of the property in question.

2). The brief statement of facts alleged in the complaint filed by the petitioner is that, the property at Survey No.39, Hissa No.1 and Survey No.39, Hissa No.1/A/3 was owned by one, Mahadu alias Mahadev Kamble and Bhagwan Ganpat Kamble. On the death of Mahadu, his heirs became entitled to the property. On 14th October, 2009 Bhagwan Ganpat Kamble and others had executed a sale-deed in respect of the two properties in favour of M/s. Samarth Erectors. The sale deed was duly registered on 15th October, 2009 after which possession of the property was allegedly handed over to M/s. Samarth Erectors. Subsequently, by the sale-deed dated 30th December, 2009 M/s. Samarth Erectors sold the property to the petitioner and handed over its possession. The complaint alleges that, accused nos.2 and 3 who are partners of accused nos.1 and 2 (respondents no.2 and 3 herein) claiming to be the Constituted Attorney of Bhagwan Kamble and others executed sale-deed dated 3rd May, 2010 in favour of accused nos.1 and 2. Therefore, the petitioner filed a private complaint being R.C.C. No. 46 of 2014 alleging commission of offences punishable under Sections 420, 463, 464, 468, 470, 417 read with Section 120B Indian Penal Code ("I.P.C." for short) contending that the documents of sale-deed, development agreement and power of attorney executed in favour of respondents no.2 and 3 are forged and fabricated documents. The trial Court, directed the police to investigate the complaint under Section 156(3) Cr.P.C. During investigation, the police arrested the accused and later filed chargesheet for the offence

punishable under Section 420 read with Section 34 Indian Penal Code against 15 persons instead of 17 persons as alleged by the petitioner.

3). Thereafter, the petitioner filed application at Exhibit-34 seeking issuance of process against all the accused under the remaining sections also. It also sought a search warrant against two persons who have not been arrayed as accused by police to seize original documents of sale-deed dated 3rd May, 2010, the development agreement in favour of respondent no.2 and the power of attorney. The trial Court, by its order dated 5th May, 2014, without there being any request therefor, directed further investigation under Section 173(8) Cr.P.C. holding that the documents are necessary documents.

4). Being aggrieved by the order, respondent no.1 preferred Revision Application No. 391 of 2014 to the Sessions Court, Pune. The Sessions Court allowed the Revision application, stating three reasons. The first reason is that, having taken cognizance of the offence punishable under Section 420 Indian Penal Code after filing of the chargesheet the trial Court had no jurisdiction to direct re-investigation under Section 173(8) Cr.P.C. The second reason is that, there could not be a suo-moto order for re-investigation. There was no request made by the petitioner for re-investigation. The third reason is that, the request for re-investigation could only come from the Investigating Officer and no such request had come

from him.

5). There is no infirmity in the view taken by the Sessions Court. It is not disputed that after receiving report from the police, the learned Magistrate has taken cognizance of the offence punishable under Section 420 read with Section 34 Indian Penal Code. Therefore, he had no jurisdiction to direct re-investigation. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)