

Anand

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

**CRIMINAL APPLICATION NO. 657 OF 2015  
WITH  
CRIMINAL APPLICATION NO. 811 OF 2015  
IN  
CRIMINAL APPLICATION NO. 657 OF 2015**

Abdul Hamid Mustafa Hussain Shaikh & ors. .Applicants

Vs.

Sagar Developers & anr. .Respondents

Mr. A. P. Mundargi, Senior Counsel a/w Mr. S. V. Marwadi i/b. Ms Mallika Ingale, for the Applicants

Mr. Shirish Gupte, Senior Counsel a/w Mr. Ganesh Gole & Mr. R. P. Joshi, for the Respondent No.1

Mr. Vinod Chate, APP, for the Respondent No.2 – State

**CORAM : A.S.GADKARI, J.**

**DATE : 28.11.2017**

**P.C.**

. This is an application under Section 482 of Cr. P.C. impugning the Order dated 30.05.2014 in R. C. C. No. 296 of 2011 passed by the 4<sup>th</sup> Judicial Magistrate First Class, Vasai thereby issuing process under Sections 182, 192, 193, 255, 420, 467, 471, 477 r/w 120(B) of the Indian Penal Code and the Judgment and Order dated 30.04.2015 passed by the Additional Sessions Judge, Vasai in Cri. Revision Application No. 25 of 2014, dismissing the said Revision.

2. Heard Mr. Mundargi, the learned senior counsel for the Applicants, Mr. Gupte, the learned senior counsel for the Respondent No.1 and the learned APP for Respondent No. 2 – State. Perused the entire record annexed to the Application.

3. The Respondent No. 1 is the Complainant in R. C. C. No. 296 of 2011 pending on the file of Judicial Magistrate First Class, Vasai and the Applicants herein are the original accused Nos. 1 to 6 & 8 respectively.

The case of the Respondent No. 1 in nutshell is that, he alongwith his wife Smt. Shahin Yusuf Qureshi are the partners of M/s. Sagar Developers. Smt. Mona Atul Patel was the owner of piece and/or parcel of land admeasuring 26.810 Sq. mtrs. lying and situate within the jurisdiction of Sub-Registrar of Assurances, Vasai. That by a registered Development Agreement dated 22.01.2008 bearing Registration No. 794 of 2008, the Complainant agreed to develop the said property and paid a sum of Rs. 1,25,00,000/- to the landlord. It was specifically agreed between the parties that the Complainant will develop the said property by constructing buildings thereon and will allot flat/shop to respective purchasers by accepting consideration. It is the further case of the Complainant/Respondent No.1 that, the Applicants herein in connivance with their Advocates who are also arraigned as accused in the said

complaint prepared and/or manufactured a bogus Power of Attorney dated 14.04.2008 by forging the signature of the Complainant Mohammed Yusuf Qureshi. It is stated that by the said Power of Attorney, the Complainant has given power to the Applicants to develop the property admeasuring 26.810 Sq. Meters. It is alleged that the Applicants prepared a further document i. e. Deed of Conveyance dated 11.11.2008 pertaining to the said property and the same was presented for registration before the Sub-Registrar of Assurances, Vasai and got it registered at Sr. No. 10994/2008 in their own favour i. e. in favour of the Applicants on 25.11.2008. It is alleged that after execution of the said Deed of Conveyance, the Applicants got their names mutated in the revenue records. The 7/12 extract of revenue records of the concerned property mentions the area of land as 4000 Sq. Meters transferred in the name of Applicants. The Complainant subsequently realized that his signature on the first document i. e. Power of Attorney dated 14.04.2008 has been forged by the Applicants and got the said land transferred in their names, he filed the present complaint.

4. The record further indicates that after lodgment of the complaint by the Respondent No. 1, the Judicial Magistrate First Class, Vasai passed an Order dated 17.06.2011 under Section 202 of Cr. P. C. thereby calling for a report from the police. That the police after

conducting enquiry/investigation into the allegations made by the Complainant have submitted a report dated 08.11.2011 before the Judicial Magistrate First Class, Vasai with their conclusion that a prima facie case has been made out by the Complainant and it appears to them that, the Applicants herein have committed the act as alleged against them. The learned Magistrate after perusing the complaint / the police report, hand writing expert's opinion and the evidence led before it, was pleased to issue process by the impugned Order dated 30.05.2014 against the Applicants and other accused persons under Sections 182, 192, 193, 255, 420, 467, 471, 477 r/w 120B of the Indian Penal Code. Feeling aggrieved by the order of issuance of process, the Applicants preferred Criminal Revision Application No. 25 of 2014 in the Court of the Additional Sessions Judge, Vasai. The Revisional Court by its Order dated 30.04.2015 was pleased to dismiss the said Revision. The said two Orders dated 30.05.2014 passed by the 4<sup>th</sup> Judicial Magistrate First Class, Vasai in R. C. C. No. 296 of 2011 and dated 30.04.2015 passed by the Additional Sessions Judge, Vasai in Cri. Revision Application No. 25 of 2014 are impugned herein.

5. Mr. Mundargi, the learned senior counsel for the Applicants submitted that for taking cognizance, for the offences punishable under Sections 182, 192 & 193 of the Indian Penal Code, sanction under

Section 195 of Cr. P. C. is required and in the absence of such a sanction, the trial Court ought not to have taken cognizance of those sections while issuing process. He further submitted that section 255 of the Indian Penal Code deals with counterfeiting of Government stamps and using the same as a genuine. That in the present case, the Complainant has failed to make out any prima facie case thereby even remotely drawing an inference to the effect that the stamp paper used for preparing Power of Attorney dated 14.04.2008 is a counterfeit stamp paper. He further submitted that even in the enquiry report submitted by the police before the Judicial Magistrate First Class, Vasai, there is no finding recorded by the investigating agency as to the genuineness or counterfeiting of the said stamp paper used for preparing the alleged Power of Attorney dated 14.04.2008 which is annexed at page No. 120 to the present Application. He further submitted that the Deed of Conveyance dated 11.11.2008 is a genuine document which is executed in pursuance of the Power of Attorney dated 14.04.2008 and that there is no question of forging and/or fabricating the said document thereby transferring further development rights in favour of the Applicants. He further submitted that counterfeiting cannot be treated at par with forgery and tampering. He submitted that, as far as Mutation Entries are concerned, those are effected after production of necessary and relevant

documents and therefore, Section 477 of the Indian Penal Code will not be attracted to the present crime. He lastly submitted that the Revisional Court without taking into consideration the relevant submissions has turned it down and therefore, interference by this Court under Section 482 of Cr. P. C. is necessary.

6. Mr. Gupte, the learned senior counsel appearing for the Respondent No. 1 while opposing the present Application strenuously took me through the record annexed to the Application and submitted that the stamp paper used for executing first Power of Attorney i. e. 14.04.2008 bearing Sr. Nos. 1924, 1925 & 1930 though may be genuine, however, subsequently, the Applicants by using an advance technique has prepared duplicate stamp papers, erased certain signatures from the first document and produced those documents before various revenue authorities. Therefore, prima facie, by using a document which resembles with original stamp paper by the Applicants would give rise to an offence punishable under Section 255 of the Indian Penal Code. Mr. Gupte further submitted that as far as the application of Sections 182, 192 & 193 of the Indian Penal Code are concerned, the trial Court has rightly taken cognizance of the same, as at the time of taking cognizance what is required to be seen is a prima facie case and not a detailed scrutiny of the evidence and/or material available on record. He

further submitted that while considering the case for quashing of the criminal proceedings the Court should not “kill a stillborn child” and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. In support of his contention, he relied on the decision of the Supreme Court in the case of *Vinod Raghuvanshi Vs. Ajay Arora And Ors.*, reported in (2013) 10 Supreme Court Cases 581. He submitted that in the present case, there are no such compelling circumstances to stifle the prosecution launched by the Respondent No. 1. He, therefore, prayed that the present Application may be dismissed.

7. The record clearly indicates that apart from the allegations made by the Complainant in the complaint, it appears that stamp papers used for executing the first alleged forged Power of Attorney dated 14.04.2008 which is annexed at Page Nos. 120 to 122 to the present Application, as per the allegations, the Applicants have, subsequently, by using advance technique prepared stamp papers (documents) which are annexed at page Nos. 243 to 245 to the present Application, which resembles with the original stamp papers and therefore prima facie, attracts the provision of Section 255 of the Indian Penal Code. It is the categorical allegation that, the Applicants in connivance with other accused have forged the signatures of Respondent No. 1 while preparing

the Power of Attorney dated 14.04.2008. Whether the sanction under Section 195 of Cr. P. C. for taking cognizance under Sections 182, 192 & 193 of the Indian Penal Code is necessary or not is an issue of debate which can be decided at the time of trial, after leading evidence in that behalf. It is to be further noted here that, the report submitted by police dated 08.11.2011 in an enquiry conducted under Section 202 of Cr. P. C., the police have categorically recorded their conclusion that prima facie case has been made out by the Complainant. The report pertaining to the signatures of the Complainant issued by the Central Forensic Science Laboratory dated 03.05.2012 mentions that there is material variance in the admitted signature of the Complainant and the signatures appearing on the alleged forged documents.

8. After taking into consideration the material available on record, the report dated 08.11.2011 submitted by the police and expert's opinion dated 03.05.2012, this Court is of the considered opinion that a strong prima facie case for issuance of process has been made out by the Complainant. There is concurrent finding recorded by both the Courts below. In considered view of this Court, the trial Court and the Revisional Court have not made any error, either in law or on facts while passing the impugned Orders. The Orders passed by both the Courts below are right and proper and no interference therein is

warranted at the hands of this Court. Application is accordingly rejected.

9. In view of rejection of Cri. Appln. No. 657 of 2015, Cri. Appln. No. 811 of 2015 does not survive and is accordingly disposed off.

10. At this stage, Mr. Mundargi, learned senior counsel for the Applicants submitted that the Applicants would like to test the correctness of the Order before the Apex Court and therefore, the operation and implementation of the present Order may be stayed for a period of six weeks from today. Mr. Gupte, learned senior counsel for the Respondent No. 1 vehemently opposed the said Application and submitted that the trial of the present Applicants is held up because of the pendency of the present Application. For the reasons stated in the foregoing paragraphs of the present Order, the prayer for stay is hereby rejected.

**(A.S.GADKARI, J.)**