

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2864 OF 2016**

Gul Kanayalal Wadhwa Petitioner
Vs.
The State of Maharashtra Respondent

Mr. Karan Bhosale, a/w Mr. Bubere i/by Kamran Shaikh,
Advocate for Petitioner.

Mr. V.B. Konde-Deshmukh, A.P.P. for the respondent- State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 6th February, 2017

P.C.

1 The petitioner is accused no.1 in Court Case No.625/
PW/2014 arising out of E.O.W. C.R. No.08 of 2012 for the
offences punishable under Sections 465, 467, 468, 471, 474,
506, 420 read with 120-B Indian Penal Code. He has filed this
petition to challenge the orders dtd. 20th July, 2015 passed by
the trial court rejecting his application for discharge from the
proceedings and the order dtd. 6th August, 2016 of the Sessions
Court rejecting his revision application against the order of the
trial court.

2 It is the case of the prosecution that Gol Darwaja
Chawl is situate at Sukhlaji Street, Nagpada, Mumbai consisting

of 73 tenements that include residential and commercial premises. The chawl being dilapidated, original accused no.4, the owner of the chawl decided to redevelop the same. For that purpose, on 27th December, 2007, he entered into an agreement with original accused nos. 2 and 3, the Directors of Lakadawala Developers. He also executed power of attorney in their favour. After the power of attorney was executed, original accused nos. 2 and 3, in the year 2008 started obtaining consent letters from the occupants of Gol Darwaja Chawl. Out of 73 tenants, 11 tenants had not given consent letters to accused no.2 to 4. However, the proposal for redevelopment submitted to the Maharashtra Housing and Development Authority (MHADA) included the consent letters of the 11 tenants. When this was realised, they complained to police which eventually culminated into registration of the offence.

3 The petitioner is a lawyer and Notary by profession. According to the prosecution, he was instrumental in making forged Consent Letters and other relevant documents without knowledge of the tenants. The Consent Letters forged by the accused are not signed by any other advocate in identification of the deponent of the Letters. The Letters carry manipulations in the figures mentioned therein and in the year of the Letters. Some of the fabricated Consent Letters are not signed by the concerned persons. Some of the Letters are of the date when the tenants were away on Haj Pilgrimage.

4 The petitioner was arrested in the offences on 7th January, 2013 and was remanded to judicial custody on 12th January, 2013. During the course of investigation, the consent letters and the register maintained by the petitioners were sent to the Central Laboratory, Hyderabad for the purpose of ascertaining the signatures on the letters and the Notary register. The report received from the Central Laboratory at Hyderabad states stating that the signatures mentioned in the Notary register as regards some of the witnesses do not match with their admitted signatures and as such the consent letters are forged. Some of the witnesses have stated in clear terms that though the signatures appearing on the consent letters are their signatures, they had put their signatures thereon on a date much subsequent to the date of the notarisation. They have also stated in their statements that they had never visited the office of the petitioner and have never signed the notary register.

5 The trial court, while considering his application for discharge has considered not only the above material against the petitioner, but also considered the reliance placed by the petitioner on Section 13 of the Notaries Act, which requires that for taking cognizance of any offence committed by a Notary in the exercise or purported exercise of his functions under the Notaries Act, complaint in writing must be made by an officer authorised by the Central Government or a State Government

by general or special order in that behalf. The trial court held that the protection provided under Section 13 of the Notaries Act does not extend to each and every act done by him as a Notary and that the wholesome object of the Section is to guard the Notaries against vexatious proceedings and to protect them from being unduly harassed or pressurised. According to the trial court, the petitioner has, prima facie played an active role in the crime alleged. It was incumbent upon the petitioner to verify the identity of the persons appearing before him for notarising the consent letters and only then notarised the same. By executing forged documents, the petitioner has played with the life of 11 hutment dwellers and attempted to deprive them of their proprietary rights. It is further observed that execution of fake/forged consent letters with dishonest and fraudulent intention definitely does not come within the definition “in the exercise or purported exercise of his functions” as defined under Section 13 of the Notaries Act. The Sessions Court in the impugned order has confirmed this view of the trial Court.

6 Mr. Bhosale, the learned advocate appearing for the petitioner relies upon three decisions of our High Court in cases (i) Ayaz Ahamed Khan vs. State of Maharashtra & Anr., reported in 2012 (3) Bombay C.R. (Cri.), page 611, (ii) Chandmal Motilal Bora vs. State of Maharashtra, reported in 2003 ALL MR (Cri.), page 2423 and (iii) Shri Bramhadev R. Dube vs. State of Maharashtra & Anr. in Criminal Writ Petition

No.1743 of 2013 to submit that the Notary Public is not expected to verify the identity of the person brought to him as the executant of the document and that identification by the person bringing the executant to him, who is either the Advocate or the Clerk of the Advocate is sufficient. In the case on hand, it is not just the identification of the individual. Prima facie, the document which was notarised was not even in existence at the relevant time. Hence, the decisions cited by Mr. Bhosale are not applicable to the present case.

7 Perusal of the statements of the witnesses makes it clear that the view taken by the courts below is a correct and proper view. If the witnesses have stated that they had put their signatures on the consent letters, on a date much subsequent to the date of notarisation of the documents, it would mean that on the date of notarisation, the documents notarised had not come into the existence and such documents had been used by the accused in the process of redevelopment. In the circumstances, the prosecution cannot be denied an opportunity to bring home the guilt of the petitioner, by scuttling the prosecution at the threshold. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)