

Sarnobat

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

CRIMINAL WRIT PETITION NO. 3456 OF 2017

Mr. Vivek Charandas Khare.

.. Petitioner.

Vs.

Mr. Sanjay Gaurishankar Sharma
and Ors.

.. Respondents

Mr. Devang D. Parmar, Advocate for the Petitioner.

Mr. S. P. Shinde, APP for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 11th OCTOBER, 2017.

P. C. :

1. The petitioner herein has challenged the order dated 6th June, 2017 whereby the learned Additional Sessions Judge, Greater Mumbai dismissed the Revision Application No. 948 of 2015 and thus confirmed the order dated 13th May, 2015 passed by Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, dismissing the complaint filed by the complainant under section 202 of Cr. P.C.

2. Heard learned counsel for the petitioner and learned APP for the State. The petitioner herein had filed a complaint before the Addl. Chief Metropolitan Magistrate alleging that the respondent Nos. 1,2 and 3 had filed a false suit for eviction being RAE & R No. 502/855

of 2001 before the Small Causes Court, Mumbai on the basis of a forged and fabricated power of attorney. The learned counsel for the petitioner has submitted that no power of attorney was executed in favour of the respondents. He contends that the respondents had not shown to the petitioner the original power of attorney. The respondents had also not produced the original Power of Attorney before the Small Causes Court. He therefore, contends that all the aforesaid acts clearly reveal that the power of attorney is forged and fabricated. The learned counsel for the petitioner further submits that forgery was committed before filing of the suit.

3. The learned APP contends that the Magistrate had referred the matter for police inquiry under section 202 of Cr. P.C. The police report clearly indicates that the complaint lodged by the petitioner was false. It states that no offence was made out against the respondents and hence, there was no question of issuing process against the respondent for the offence of forgery or any other offence.

4. I have perused the records and considered the submissions of the respective parties. The records reveal that there are several disputes in respect of building situated at Shahid Bhagat Singh Road, Fort, Mumbai, several proceedings are pending before various

courts. The respondent No. 1 claiming to be the power of attorney of Hashimbhai Salehbhai and Jivanji Salehbhai Saffiyudin had filed a suit for eviction being RAE & R No. 502/855 of 2001 before the Small Causes Court at Mumbai against the petitioner herein. The petitioner had filed a complaint alleging that the respondent had filed the said suit on the basis of forged and fabricated Power of Attorney.

5. The learned CMM in exercise of powers under section 202 of Cr. P.C. had referred the complaint to the police for inquiry. The report submitted by the police clearly indicates that the complaint lodged by the petitioner has no substance and there was no material to substantiate his contention that the power of attorney was forged and fabricated. The report further reveals that the respondent No. 1 had also lodged a complaint that the original power of attorney was lost. Hence there were reasons for not producing the original Power of Attorney before the Court. Even otherwise, the mere fact that the respondent had not produced the original power of attorney before the Court or that he had sought leave to lead secondary evidence does not lead to an inference that the power of attorney was forged and fabricated.

6. Considering the averments made in the complaint as well

as the report submitted by the police, in my considered view the Addl. CMM was justified in dismissing the complaint under section 203 of Cr. P.C. I do not find any reason to interfere with this order.

7. The petition has no merit and has accordingly dismissed.

[ANUJA PRABHUDESSAI, J]