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

WRIT PETITION NO. 4614 OF 2017

Zehrbai Gulam w/o Abdul Hussein

Parekh

... Petitioner

V/s.

The State of Maharashtra and ors

... Respondents

Mr. Vivek Kantawala a/w Mr. Amey Patil,
Ms. Bhairavi Waravdekar, Mr. Vivek Sharma
i/by Vivek Kantawala & Co., for the
Petitioner

Mr. Subodh Desai a/w Mrs. Uma Sanjay
Sharma, for the Respondents.

Mr. H. J. Dedia, APP for respondent State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 19th DECEMBER, 2017.

P.C. :

1] Heard learned counsel for the petitioner and learned
counsel for the respondents .

2] By this petition, filed under Article 227 of the Constitution
of India, the petitioner is challenging the order dated 18.4.2017,
passed by the Metropolitan Magistrate Court No.69, Mazgaon,
Mumbai in C.C.No.235/SW/2015, thereby issuing process against the
petitioner and two other accused, for the offence punishable under
sections 465, 467, 468, 471, 474, 181 and 182 read with 34 of the

Indian Penal Code.

3] As the petitioner despite seeking time on two occasions and getting bailable warrant cancelled, thereafter remaining absent, the Non Bailable Warrant came to be issued against her in 2017. Hence she has preferred this writ petition challenging the issuance of process.

4] The submission of learned counsel for the petitioner is that in respect of said grievances, the complainant has also filed Civil Suit, bearing S.C., 443 of 2015 and claimed exactly the same relief on the same averments. In such situation, filing of complaint and getting process and N.B.W. issued, is not at all warranted. However, the perusal of the impugned order passed by the trial Court reveals that the trial Court has not only considered the complaint, but verified the statements and documents filed on record by the complainant. The trial Court has also directed the Investigating Officer for making investigation as per section 202 of the Code of Criminal Procedure in the complaint; and then after going through the statements recorded by the Investigating Officer and also considering the detail report submitted by him, has issued process.

5] Paragraph No.2 of the impugned order passed by the trial Court clearly indicates that the Investigating Officer has after recording statements of witnesses and after collecting the

information from various departments has concluded that the documents such as rent receipts, shop and establishment licences, telephone bills and electric bills attached to deed of conveyance are forged one. The Investigating Officer has also pointed out that the death certificates of Lailabai Kikobai and Fida Mannubai Hussain are also forged one. It was also pointed out that that at the time of registration of document, accused No.1- present petitioner has represented that Lailabai and Mannubai had died issue-less. But the complainant has collected material to show prima face that they were survived by their legal representatives. Thus, the trial Court has come to prima facie opinion and finding that the petitioner has given false information at the time of registration of the document.

6] The trial Court also found that the Investigating Officer has concluded in his report that the present petitioner in furtherance of common intention with other co-accused has prepared false rent receipts, shop and establishment licence, telephone bills and electric bills and used those forged documents as genuine alongwith conveyance deed.

7] In view of this categorical report submitted by the Investigating Officer and after going through the same in detail and finding prima facie substance therein, when trial Court has issued the process against the petitioner in the opinion of this Court, no

interference is warranted therein merely because civil suit is also filed and pending in the court. It is needless to state that the remedies of civil nature and criminal nature are two different remedies. Merely because civil remedy is also availed, it does not mean that the acts of the person which also constitute offence of criminal nature, should go unpunished or should not be taken cognizance of. Hence mere filing of the civil suit is not sufficient to hold that process issued against the petitioner is unwarranted and it is an abuse of process of law.

8] Having regard to the detailed order passed by the trial Court, the material available on record, averments in the complaint and supported with the report of Investigating Officer, this Court does not find that any reason is made out to interfere in the impugned order of the trial Court. The writ petition, hence, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]