

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL WRIT PETITION NO. 229 OF 2017**

Shaban Gulamali Thanawala ... Petitioner  
Vs.  
Behram Maneck Pardiwala & Ors ... Respondents

...

Mr. Ashok Mundargi, Sr. Counsel I/by Mr. Vinod Kashid for the Petitioner.

Ms. Amna Usman for the Respondent No.1.

Mr. Miheer Gheewala for the Respondent No.2.

Mrs. N.S.Jain, APP for the Respondent-State.

...  
**CORAM : PRAKASH D. NAIK, J.**  
**DATE : 3<sup>rd</sup> AUGUST, 2018.**

**P.C.**

1. The petitioner has challenged the order dated 24<sup>th</sup> February, 2016 passed by Additional Chief Metropolitan Magistrate, 47<sup>th</sup> Court, Esplanade Mumbai and the order dated 28<sup>th</sup> September, 2016 passed by Additional Sessions Judge rejecting application for return of property.

2. The petitioner is the real brother of deceased Ramzan Gulamali Thanawala. The petitioner filed private complaint before the Court of Additional Chief Metropolitan magistrate alleging offences punishable under Sections 420, 465, 467, 468, 471, 408, 451 to 457, 392, 393, 395, 506(II), 328 r/w 34 of Indian Penal Code against the Respondent No.1 and 2 Yusuf Patel (who expired on 8<sup>th</sup> December, 2015). Investigation was directed under Section

156(3) of Code of Criminal Procedure. FIR was registered as MECR No. 5 of 2015 for the aforesaid offences. During the course of investigation, the accused were arrested and subsequently granted bail. On completion investigation, the chargesheet was filed.

3. The case of the prosecution is that the accused have prepared forged and bogus Will of deceased Ramzan Thanawala and transferred the amount in the State Bank of Travancore, Mumbai. The said amount has been seized by police during investigation and it is lying in the said bank. It is the case of respondents No.1 and 2 that, deceased Ramzan has executed the Will. Probate petition is filed in High Court which is challenged by applicant alleging that the Will is forged and bogus.

4. The petitioner preferred application before Court of Magistrate for transferring amount to his account as per provisions of Section 457 of Code of Criminal Procedure. The said application was rejected on 24<sup>th</sup> February, 2016. The petitioner, thereafter preferred Criminal Application No. 271 of 2016 in this Court which was allowed to be withdrawn by order dated 11<sup>th</sup> August, 2016 with liberty to file fresh application before the trial Court as may be permissible under law. The Court also expedited

trial with direction to conclude it within one year. The time to conclude trial has been subsequently extended by this Court. The petitioner preferred an application before the Court of Sessions vide Exh.6 in Session Case No. 483 of 2016 and prayed that the seized amount be returned to the petitioner or interest on said amount be given to him. The petitioner claimed that he is the legal heir of Ramzan Gulamali Thanawala and is entitled to claim the amount. The application was rejected by the Sessions Court on 28<sup>th</sup> September, 2016. According to the petitioner, the Will is forged and fabricated, whereas it is the contention of the accused that the Will is genuine. The counsel for the petitioner reiterated the submissions made before the Sessions Court and submitted that the petitioner is senior citizen aged about 86 years. His health is deteriorating. He is facing drastic financial issues for maintaining his health. He is in need of financial help. It is submitted that being the legal heir of the deceased Ramzan Gulamali Thanawala, the petitioner is entitled for the said amount. Learned counsel for petitioner submitted that the petitioner is entitled for property stipulated in clause 6 of the disputed Will. The application was opposed by the prosecution as well as respondent accused.

5. Learned APP submitted that the prosecution has examined near about 19 witnesses and the matter is posted for recording the statement of accused under Section 313 of Code of Criminal Procedure. Learned counsel for the accused submits that in pursuant to recording the statement of accused under Section 313 of Code of Criminal Procedure, the accused would decide whether they intend to examine any defence witness. Both the counsel for the respondents has strongly opposed this application and submitted that the relief sought in this application should not be granted. Learned APP submits that since the trial is about to get over shortly relief sought in this petition may not be granted and it may be left to the trial Court to decide the issue relating to return of property at the conclusion of trial.

6. Without adjudicating on the merits of the case, it is apparent the prosecution has examined nineteen witnesses and the prosecution has closed the evidence and the next stage is to record the statement of accused under Section 313 of Code of Criminal Procedure. Learned counsel for the petitioner submitted that although the case is kept for recording statement under Section 313 of Code of Criminal Procedure considering the magnitude of the offence and the time which would be spent in recording

statement of accused, examination of defence the witnesses and the arguments it would take substantive time to conclude the trial. Learned counsel for the petitioner also submitted that the trial was expedited earlier on two occasions by granting extension for concluding the trial sought from this Court. On 11<sup>th</sup> June, 2018, this Court had extended the time to conclude the trial within a period of six months.

7. Looking to the nature of the issues involved in the matter and the stage of the trial as stated above, it would be appropriate that the issue relating to the property be decided by the trial Court at the time of conclusion of trial. Considering the fact that the extension was granted by this Court on two occasions and the petitioner is senior citizen and also considering the fact that the evidence is already recorded, the trial Court shall conclude the trial within extended time and no further extension would be granted. However, both the parties are expected to co-operate in concluding the trial. The trial Court shall deal with the issue relating to return of property without being influenced by the earlier orders. The Writ Petition stands disposed off.

Digitally signed  
by Sachidanand  
Kuttan Nair  
Date:  
2018.08.14  
16:09:20 +0530

( PRAKASH D. NAIK, J. )