

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

CRIMINAL WRIT PETITION NO.1015 OF 2016

Mr.Edward Sabostin Cardoz & Anr. Petitioners

versus

The State of Maharashtra & Ors. ... Respondents

.....

- Mr.Shekhar Jagtap a/w Ms. Sairuchita Chowdhary i/b. J. Shekhar & Co., Advocate for the Petitioners.
- Mrs.M.M. Deshmukh, Addl.P.P. for the State/Respondent.
- Mr.V.D'Silva, Advocate for Respondent No.2.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.**
DATE : 02nd MAY, 2018.

P.C. :

1. The above Writ Petition has been filed for quashing of the MECR No.3/13 registered with Khar Police Station u/s 465, 467, 471, 406, 420, 120-B r/w 34 of the Indian Penal Code.

2. The First Informant i.e. the Respondent No.2 herein is the brother of the Petitioners herein. The gravamen of the allegations against the Petitioner is the forgery of a Deed of

Assignment, which has been executed in respect of a shop being shop No.4, Lilaram Co-Op Hsg. Soc., Chiwum Khardanda, Dandpada, Khar (W), Mumbai, in favour of the Petitioner No.1. The said document bears the thumb impression of the mother of the Petitioners and the Respondent No.2 and it is alleged that the said document was executed on 07/03/2009, whilst the mother was in hospital, who ultimately died on 12/03/2009. The allegation is as regards the manner in which the document was got executed by the Petitioners. The rest of the allegations in the FIR are in respect of the transfer of a flat in Nawab Mansion situated at Chiwum Village, Dandpada, Khar (W), Mumbai, which has been transferred from the name of the mother to the name of the Petitioner No.1 and the rent receipt has also been issued in the name of Petitioner No.1 and he is also drawing financial benefits out of the said flat.

3. The allegation is also in respect of one shop No.4 which is directly given to one DVS Enterprises on rental basis by the Petitioner No.1. It is also the allegation of the Respondent

No.2 that the said Deed of Assignment was got executed when their mother was not in her sense as she was in the ICU.

4. In the background of the aforesaid allegations the learned Counsel Mr.Jagtap would seek to contend that the allegations made against the Petitioners would at the highest would amount to a civil dispute between the parties, as regards the property which was standing in the name of the mother. It was also the submission of the learned Counsel that insofar as the transfer of tenancy is concerned, the same is within the domain of the landlord, who is the Accused No.3, the Respondent No.2 therefore cannot have any grievance if the landlord has agreed to transfer the tenancy in favour of the Petitioner No.1. The learned Counsel sought to place reliance on an unreported decision of a Division Bench of this Court in Criminal Application No.613/16 and companion matters.

5. Having heard the learned Counsel for the Petitioners, we are unable to accept the contention urged by him on behalf

of the Petitioners. The contents of the FIR prima facie disclose the commission of cognizable offence, punishable under the provisions which have been invoked by the Investigating Agency. Hence at this stage it cannot be said that the Petitioners have been wrongly arraigned as accused in the offences alleged against them in the FIR. It is required to be noted that against the landlord the charge-sheet has already been filed by the Investigating Agency and the charge-sheet in the case of the Petitioners could not be filed, as there is a restraint order operating against the Investigating Agency in the above Writ Petition. We therefore do not deem this a fit case to exercise our writ jurisdiction. The reliance placed on the unreported judgment in our view is misplaced, as the facts in the said case stand apart than the facts in the present case.

6. In that view of the matter, the Writ Petition is required to be dismissed and is accordingly dismissed.
7. All interim orders stand vacated.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)