

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2159 OF 2016**

Damjibhai K. Dedhia	...Petitioner
Versus	
State of Maharashtra & Anr.	...Respondents

Mr. Girish Kulkarni i/b Mr. Madhusudan D. Pareek for the Petitioner

Mr. Yogesh Y. Dabke, A.P.P for the Respondent No.1-State

Mr. Kartik Garg, appointed Advocate for the Respondent No.2

CORAM : REVATI MOHITE DERE, J.
MONDAY, 29th JANUARY, 2018

P.C. :

1 Heard counsel for the parties.

2 By this petition, the petitioner has impugned the order dated 28th March, 2014, of issue process passed by the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai in Case No. 326/SW/2013 as well as the order dated 26th April, 2016, passed by which the learned Sessions Judge, Dindoshi, Mumbai, by which, the petitioner's Criminal Revision Application No. 75 of 2014, came to be dismissed.

3 Learned counsel for the petitioner submits that the petitioner is a developer and that he was not, in any way, concerned with the allegations made in the complaint. He submitted that the petitioner had purchased the property from the original landlord i.e. M/s. J. S & M. F. Builders and as such, he had no reason to doubt and suspect that Kirit Mehta (accused) was not a tenant. He submitted that the order issuing process as against the petitioner and the order confirming the same, be quashed and set-aside.

4 Learned counsel for the respondent No. 2/complainant opposed the petition. He submitted that no interference is warranted in the impugned orders. Learned counsel for the respondent No. 2 has filed an affidavit of the respondent No. 2 and has annexed certain documents, showing the nature of fraud committed by the accused. He submitted that when the Conveyance Deed was entered into between the petitioner and the original landlord i.e. M/s. J. S & M. F. Builders, the name of the respondent No.2/complainant was shown in the list of tenants annexed to the said Conveyance Deed dated 24th October, 2011, and hence, the question of respondent No. 2, giving a No objection Certificate ('NOC') in 2003 did

not arise. He further submitted that a perusal of the alleged NOC given by the respondent No. 2/complainant shows that his name is wrongly mentioned as Suryakant Raimalji instead of Suryakant Madani; that there is no date on the said letter; that the age of the respondent No. 2 is incorrectly mentioned as 65 years; that the signature on the said document, on the face of it, was not of the respondent No.2; etc. He, therefore, submitted that the complaint filed by the respondent No. 2 clearly discloses the commission of the alleged offences and hence, no interference was warranted in the impugned orders.

5 Perused the papers as well as the impugned orders. According to the respondent No. 2/complainant, he was one of the tenants in the building i.e. Roopani Nagar, which went under redevelopment. According to the respondent No.2/complainant, aged 75 years, he was a tenant in the said premises i.e. Room No. 27, First Floor, Roopani Nagar, L. T. Road, Borivali (West), Mumbai, for several years. He has stated that as he underwent a By-pass surgery, he was not residing in the said premises from 2005, and that he had kept the said premises under lock and key, and was regularly paying rent to the landlord. He has further stated that the

petitioner purchased the said building from the landlord i.e. M/s. J. S & M. F. Builders in 2011 by executing a Conveyance Deed dated 24th October, 2011. The respondent No.2/complainant's name appears at serial No. 31 as a tenant in Room No. 27, which is the subject matter of dispute. Thus, *prima facie*, the record shows the name of the respondent No. 2, as a tenant of the said room. According to the respondent No.2/complainant, at no point of time, he had surrendered his tenancy rights in favour of the petitioner, nor had he given an NOC for transfer of the said room in favour of the accused No.2-Kirit Mehta. The respondent No. 2/complainant has, in his complaint, has further alleged that when he obtained copies of the documents from the BMC in 2011, he was shocked to see that his name was removed from the list of tenants and the name of accused No. 2-Kirit Mehta was replaced in his place. He has further stated that as the room was demolished by the petitioner in 2013, all the original documents kept therein, were lost.

6 Admittedly, the Conveyance Deed was entered into between M/s. J. S & M. F. Builders i.e. the former landlord and the petitioner. At serial No. 31 of the Conveyance Deed, the name of the respondent

No.2/complainant is shown as a tenant in Room No. 27 on the first floor. *Prima facie*, there are several discrepancies in the alleged NOC given by the respondent No.2/complainant to the petitioner i.e. the name is wrongly mentioned; the date is not given; age of the respondent No. 2 is incorrect and *prima facie* even the signature is different from the admitted signature.

7 Considering the material on record, no interference is warranted in the impugned order issuing process dated 28th March, 2014 passed by the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai in Case No. 326/SW/2013 as well as the order of the revisional court dated 26th April, 2016 passed by the learned Sessions Judge, Dindoshi, Mumbai, dismissing the petitioner's Criminal Revision Application No. 75 of 2014, in writ jurisdiction. Accordingly, the petition is dismissed.

8 It is made clear that the observations are *prima facie* for the purpose of considering the petition and the learned Judge shall conduct the case on its own merits, uninfluenced by the observations made herein.

9 Petition is disposed of accordingly.

REVATI MOHITE DERE, J.