

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2618 OF 2014**

Kerman Kesasan Mistry

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Sharez Mukri a/w Mr. Abdullah Qureshi i/b India Law for the
Petitioner

Mrs. A. S. Pai, A.P.P for the Respondent Nos.1 & 2-State

Mr. Ashish Chavan i/b Mr. V. V. Khemka for the Respondent No. 3

API Mr. Kishore Pawar from Khar Police Station is present

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
MONDAY, 6th AUGUST 2018***

P.C. :

1 The above Writ Petition has been filed for quashing of the FIR
being C.R. No. 104 of 2011 registered with the Khar Police Station,
Mumbai on 24th February 2011 for the offences punishable under Section
442 r/w 34 of the Indian Penal Code. The reading of the FIR discloses that
the allegation made therein revolve around the possession of a flat being
Flat No. 6 on the 2nd floor, Pali Hill Estate Cooperative Housing Society

Ltd., Pali Hill Road, Khar (West), Mumbai. The said flat belongs to Lt. Col. Mr. Indur Narayandas Malkani, who is the uncle of the wife of the Respondent No.3. The FIR contains facts as regards the allegations of the said flat being usurped by the Petitioner herein.

2 An order came to be passed in the above Writ Petition on 5th November 2014 by a Division Bench of this Court directing the Investigating Officer not to file charge-sheet without prior approval of this Court and no coercive steps to be taken against the Petitioner. We are informed by the learned A.P.P Mrs. Pai today, on the instructions of API Mr. Kishore Pawar, that the investigation is virtually complete and that the charge-sheet has not been filed in view of the fact that there is a restraint order operating against the investigating agency.

3 The learned counsel appearing on behalf of the first informant Mr. Ashish Chavan states that the FIR is required to be investigated also from the angle of the offence punishable under Section 406 of the Indian Penal Code, as according to the learned counsel, the ingredients of the said offence are also made out in the FIR.

4 We have perused the FIR in question. *Prima facie*, we find that the ingredients of the offence under Section 442 of the IPC are made out. Insofar as the case of the first informant, which is now sought to be advanced as regards the ingredients of the offence punishable under Section 406 of the IPC are concerned, we refrain from commenting on the said aspect and it would be for the investigating agency to go into the said aspect and arrive at an appropriate conclusion whether the said aspect requires to be investigated or not. However, we do not deem this a fit case to exercise our writ jurisdiction. We have refrained ourselves from making any elaborate comments on merits, lest, it affects the Petitioner in the trial or during the course of pursuing any application made under the Code of Criminal Procedure. The Writ Petition is accordingly dismissed.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.