IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.438 OF 2015

Padmanabh Anantrao Panditrao, Age 58 years,
R/o.Minche Budruk, Tal.Bhudargad,
District Kolhapur. Applicant

versus

1. Suresh Dattatraya Kulkarni, Age 65 years,
R/o.Pinak Shivalaya, Flat No.A-41,
R.S.No.1734/3, A Ward, Shivajipeth,
Kolhapur.

2. Shrikrushna Anantrao Panditrao, Age 54 years,
R/o.R.S.No.747, B-1, Vasant Vishwas Park,
Devkar Panand, Kolhapur.

3. Janaki Shrikrushna Panditrao, Age 50 years,
R/o.R.S.No.747 B-1, Vasant Vishwas Park,
Devkar Panand, Kolhapur.

4. Vijayalakshmi Shrinivas Panditrao,
Age 53 ye3ars, R/o.Ijubai Colony, Gargoti,
Tal.Bhudargad, Kolhapur.

5. The State of Maharashtra
through Shahupuri Police Station,
Station Road, Shahupuri, Kolhapur. Respondents

Mr.Amrut Joshi I/by Rushabh Sheth for applicant.
Mr.S.R.Borulkar I/by Jayant J. Bardeskar for respondent no.1.
Mr.Manoj Patil for respondent nos.2 to 4.
Mr.A.R.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 1st August 2018

PC :

1. Heard both sides for final disposal. The applicant is the first informant in First Information Report (`FIR') No.317 of 2009 registered with Shahupuri Police Station, Kolhapur for offences under Sections 406, 408, 420, 464, 467, 468,471, 506 r/w Section 34 of Indian Penal Code. The said FIR was registered on 25th December 2009. Pursuant to that, investigation was conducted and the report was filed before the concerned Court on 12th February 2011 and the proceedings were registered as Regular Criminal Case No.114 of 2011. The proceedings are pending before the Court of Chief Judicial Magistrate, Kolhapur. The applicant has challenged the orders passed by the Court below applications Exhibit-135 and Exhibit-147 on 20th August 2015 rejecting the said applications.

2. The factual background pleaded by the applicant leading to the filing of the present revision application is as follows :

(a) The respondent no.1 is one of the accused named in the FIR along with respondent nos.2 to 4 and others. The FIR was lodged on 25th December 2009. The investigation was conducted and the charge sheet was filed. However, the respondent no.1 was not charge sheeted whereas, the respondent nos.2 to 4 was charge sheeted as accused in the said proceeding. The respondent no.1 one is not charge sheeted without assigning sufficient reasons;

(b) The applicant had filed an application vide Exhibit-101 before the Trial Court praying for order u/s 319 of the Cr.P.C against respondent no.1 for the purpose of making him an accused in RCC

No.114/2011. However, the said application was rejected being premature as evidence was yet to be laid before the Trial Court;

(c) Subsequently the evidence of the complainant/applicant was recorded by the Court. The applicant filed an application u/s.319 of Cr.P.C against respondent no.1 for the purpose of making him as an accused in the said proceedings. The said application was preferred vide Exhibit-135. The applicant also filed an application vide Exhibit-147 praying for a direction to the investigating officer to conduct further investigation as is necessary to produce the original power of attorney dated 21st May 2002 which is the disputed document and the subject matter of the criminal proceedings. These applications were preferred on 27th March 2015;

(d) The respondent no.1 is the maternal uncle of applicant. The respondent no.2 is the younger brother of the applicant. The respondent no.3 is the wife of respondent no.2. The respondent no.4 is the wife of the elder brother of the applicant;

(e) The applicant joined the Indian Army on 5th April 1984 and retired on 21st December 2010 as Lieutenant Colonel. During the period the applicant remained on duty at several locations and visited his native place only intermittently. The applicant's father was granted certain land parcels comprising of several gat numbers in Minche Budruk in Kolhapur District by the Government. The said lands were used for bauxite mining and the business arising therefrom. The applicant along with his mother, his elder brother Mr.Shriniwas Panditrao and younger brother respondent no.2 are the legal heirs and are entitled to the said lands. While the applicant was away on service in Army, the business of bauxite mining was looked after by his brother Mr.Shriniwas Panditrao who died on 30th July 2007 and respondent no.2;

(f) The applicant learnt about execution of a power of attorney dated 21st May 2002 wherein Shriniwas Panditrao, the applicant, respondent no.3, respondent no.4, the applicant's wife Mrs.Geetanjali Panditrao and the applicant's mother Mrs.Ramabai Panditrao have been shown as executants who have purportedly executed the power of attorney in favour of respondent no.2 which was notarised before notary public. The power of attorney purports to empower respondent no.2 to inter alia carry out the business dealings of M/s.Panditrao Mines and Minerals Pvt.Ltd of which the applicant was one of the directors;

(g) The applicant and his wife were in State of Jammu and Kashmir on the date of alleged execution of power of attorney i.e. 21st May 2002. The same is evident from the service records of the applicant. The power of attorney is therefore fraudulent and bogus and the signature of the applicant and his wife were forged;

(h) The applicant learnt that on the basis of power of attorney, two business agreements have been fraudulently entered with one Mr.Neeraj Jaju. Upon inquiry with respondent no.2 and Mr.Jaju, the applicant received the copy of the agreements and the power of attorney. The applicant has learnt that respondent no.2 who is an advocate by profession has signed before the notary as the witness identifying the supposed executants mentioned on power of attorney at the time of its execution even though the applicant and his wife were not present. The applicant was defrauded of his money. In view of this, the FIR was lodged on 25th December 2009;

(i) The applicant did not receive any notice from the Court or the police station seeking his say on the closure report filed by the investigating officer before the Trial Court. The applicant is not aware whether any report u/s 169 of Cr.P.C was filed by the police;

(j) The evidence of the applicant was recorded on 2nd May 2014 till 19th January 2015. The applications for impleading respondent no.1 vide Section 319 of Cr.P.C as well as further investigation were rejected by the learned Magistrate by order dated 20th August 2015. The applicant is aggrieved by the said orders and has preferred the present revision application in this Court.

3. This Court heard this application on 19th November 2015. The respondents were not present. The Court proceeded to observe that the main respondent who was expected to oppose the application is respondent no.1 and despite service of notice, he has remained absent. The other respondents i.e. respondent nos.2 to 4 are formal. They are also served but they are absent. Even learned APP is absent. This Court by order dated 19th November 2015 allowed the application by setting aside order dated 20th August 2015 passed by the learned Magistrate. This Court permitted re-investigation of the case and impleading accused under Section 319 of Cr.P.C. The respondent no.1 was made accused. The respondent nos.2 and others preferred Special Leave to Appeal before the Hon'ble Supreme Court which was numbered as Appeal No.438 of 2015 challenging the order dated 19th November 2015 passed by this Court. The

Supreme Court by order dated 22nd January 2016 issued notice to the respondents therein. In the mean time, the operation of the impugned order was stayed. The appeal was thereafter heard by the Hon'ble Supreme Court on 17th October 2016. The Supreme Court while disposing off the said appeal observed that the learned counsel for the respondents state that one of the contention advanced at the hands of the counsel for the appellants is that the impugned order was passed by the High Court without affording an opportunity of hearing to the appellants. The counsel for the respondents further states that they have no objection if the impugned order is set aside and the matter is remanded back for fresh adjudication of the claim of the parties on merits, after affording an opportunity of hearing to both the parties. The counsel for the appellants agreed with the submission advanced at the hands of counsel for respondents. In view of that, the Supreme Court set aside the common impugned order dated 19th November 2015 passed by this Court in this revision application and restored the application to the file of the High Court. The parties were directed to appear in this Court on 30th November 2016. The High Court was directed to adjudicate the controversy on merits in accordance with law after affording opportunity of hearing to both the parties.

4. Learned advocate for the applicant submitted that the respondent no.1 was named as an accused in the FIR and there was no reason not to charge sheet him in the said case. The accused have acted in connivance with each other. The false document was prepared in order to grab the property belonging to the applicant. The power of attorney was notarized before the notary public. The power of attorney purports to appoint and empower respondent no.2

to carry out the business dealings of M/s.Panditrao Mines and Minerals Limited of which the applicant was one of the director. The applicant and his wife were in the State of Jammu & Kashmir on the date of the alleged execution of power of attorney i.e. 21st May 2002. The accused had fraudulently entered into business agreements with Mr.Neeraj Jaju on the basis of the said power of attorney. The applicant was put to wrongful loss by the accused. Despite there being sufficient evidence on record with regards to the preliminary report of disciplinary proceedings initiated against respondent no.1 before the Bar Council of Maharashtra and Goa, and the service records evidencing the fact that as on the date of the alleged execution of power of attorney, the applicant was in the State of Jammu and Kashmir, amongst other evidence, demonstrating the evident culpability of the respondent no.1, the Trial Court did not initiate the process u/s 319 of Cr.P.C.. False signature of the applicant and his wife have been put on the power of attorney that was executed before a notary on a day when the applicant was in Jammu and Kashmir. It is submitted that at the time of execution of power of attorney, Shriniwas Panditrao being the elder brother of the applicant, Mrs.Vijayalaxmi Shriniwas Panditrao, applicant's wife Mrs.Geetanjali Panditrao, the power of attorney holder (respondent no.2), Mrs.Janaki Panditrao (respondent no.3) and applicant's mother Mrs.Ramabai Panditrao were present. The applicant was not given an opportunity by issuing notice when the investigating officer had filed the charge sheet in the Court by exonerated the respondent no.1. There was sufficient material before the Trial Court in the form of preliminary report of disciplinary proceedings before the Bar Council of Maharashtra and Goa and the service records of the applicant demonstrating his presence in Jammu and Kashmir on the date of power of attorney to prima facie establish the culpability of respondent no.1 in the said crime. The Trial Court failed to appreciate that given the aforesaid documents there was prima facie material against the respondent no.1 to be tried as a co-accused in the said proceedings. The Court failed to appreciate that there was prima facie material against the respondent no.1 inasmuch as he has identified the applicant and his wife as some of the executants and thus falsely confirmed their presence during the execution of power of attorney by identifying them as present and executing the document. It is further submitted that the Trial Court has not applied its mind inasmuch as it has apparently drawn adverse inference against applicant who is the de-facto complainant merely because the original power of attorney is not on record. Inasmuch as he has identified the applicant and his wife as some of the executants and thus falsely confirmed their presence during the execution of power of attorney by identifying them as present and executing the document. It is further submitted that the Trial Court has not applied its mind inasmuch as it has apparently drawn adverse inference against the applicant who is the de-facto complainant merely because the original power of attorney is not on record. The Court could not take into consideration the fact that the possession of power of attorney should be with the attorney holder. Moreso, when the applicant has filed the FIR on the ground that the power of attorney is forged and fabricated, on this background, the power of attorney must be always in the custody and domain of attorney holder.

5. It is submitted by the applicant's advocate that the Trial Court has committed gross error while rejecting the applications preferred

by the applicant. The Court has erred in observing that photocopy cannot be proved in evidence. The Court failed to appreciate that in the absence of original document, a photocopy can be proved as a secondary evidence. The identification before notary by the respondent no.1 is in respect of identification of the signatures. He has made a false identification of the executants before the notary despite the fact that applicant and his wife were not present at the place of execution on the date of the power of attorney. The identifying witness is required to identify each of the executants to the notary and all the executants have to be present before the notary at the time of notarization. The Trial Court has committed an error in observing that the respondent no.1 has put his signature on the power of attorney merely because he knows the executants personally and therefore no offence is made out. The Court failed to consider that the respondent no.1 had put his signature as a witness who identifies the executants present before the notary and in the instant case he has identified all the executants despite the fact that the applicant and his wife were absent. Learned counsel for applicant relied upon the judgment of this Court in the case of **J.G.Hegde Vs. R.D.Shukla** reported in **AIR-2004-Bom-55**.

6. Learned advocates representing respondents submitted that the learned Magistrate has rightly rejected the applications preferred by the applicant vide Exhibits-135 and 147. It is submitted that the FIR was registered on 25th December 2009. Thereafter the investigation was completed and charge sheet was filed. The respondent no.1 was exonerated under Section 169 of the Cr.P.C. The evidence of all the witnesses recorded by the Trial Court. The recording of evidence was completed in 2015 and the trial has come

to an end. The applicant has erroneously preferred the applications with mala fide intentions to cause harassment to the respondents. It is submitted that taking the material on record as it is, the complicity of the respondent no.1 is not disclosed in the alleged crime. The powers u/s.319 of Cr.P.C cannot be exercised mechanically and the Trial Court has assigned cogent reasons for declining the relief sought by the applicant. It is further submitted that the application for further investigation is mala fide. The investigation was conducted by police and charge sheet was filed and thereafter the Trial Court has completed recording of evidence of all the witnesses and such an application for further investigation cannot be entertained and thus the Court has rejected the application preferred by the applicant. The further investigation was sought mainly on the ground that the original power of attorney be directed to be produced on record. It is submitted that the investigation was conducted from 2009 and the charge sheet was filed by the police and the power of attorney could not be produced by the investigating machinery. It is submitted that there is nothing on record to indicate that either of the respondents are in possession of the power of attorney. The evidence recorded by the Court does not show any complicity of the respondent no.1 in the alleged crime. The earlier order dated 19th November 2015 was passed by this Court when the respondents were not heard. The various aspects which show that the respondent no.1 has not committed any crime, could not be pointed out to this Court. It is further submitted that the respondents could not brought to the notice of this Court that the case for further investigation is not made out. In any case, the said order has been set aside by the Hon'ble Supreme Court. It is submitted that the sister of respondent no.1 late Ramadevi was married to Anantrao Panditrao. Applicant is one of the son of sister of respondent no.1. The sister of respondent no.1 had expired on 27th November 2011. In the title clause of the power of attorney dated 21st May 2002, it is specifically stated that Ramadevi was signing on behalf of the applicant as his power of attorney and therefore the question of the applicant signing or not signing the said power of attorney dated 21st May 2002 does not arise. The presence or absence of the applicant at the time of executing the power of attorney is totally irrelevant. The wife of the applicant Smt.Geetanjali Panditrao was present and has signed on the said power of attorney in person. The revision applicant had not raised any grievance till today against Ramadevi Panditrao who had signed on behalf of him as his power of attorney and has never cancelled/ revoked the power of attorney dated 14th December 1998 executed in favour of Smt.Ramadevi. It is submitted that after the death of his father Anantrao Panditrao, the applicant for the purpose of management and administration of his share of land in his absence executed the power of attorney in favour of his mother Ramadevi Panditrao on 14th December 1998. On the basis of the said power of attorney, she had executed several documents for management of the said property as per the directions and consent of the revision applicant. He had never disputed the said power of attorney and any act done by his mother Ramadevi on his behalf as his power of attorney holder. It is submitted that the respondent no.1 has signed the original power of attorney dated 21st May 2002 stating that he knows the deponent personally only to show his acquaintance with the deponent as he is close relative.

7. The respondent no.1 has not played any role in drafting execution, implementation and cancellation of power of attorney.

The sister of respondent no.1 had signed the original power of attorney on behalf of the applicant on the basis of power of attorney dated 14th December 1998. It is submitted that the respondent no.2 had entered into an agreement with M/s.Western India Mines and Development on 26th February 2006 to carry out the mining activities on agreed terms and conditions and executed agreement with M/s.Gamma Ore India Ltd on 26th February 2006 for selling bauxite ore from the mines as power of attorney holder of all directors of Panditrao Mines and Minerals which is not disputed by the applicant. He was fully aware about the execution of power of attorney dated 21st May 2002 and has earned profits by virtue of the said agreements. The applicant has also withdrawn Special Civil Suit No.58 of 2011 filed by him before the Civil Judge for declaration that the power of attorney dated 21st May 2002 was illegal and bogus. The suit was withdrawn without reserving any liberty to file a fresh suit. The wife of the applicant was personally present and had signed the power of attorney. On 22nd January 2008, some of the directors of the company including the applicant and his wife with respondent no.4 and mother of the applicant had decided to cancel the power of attorney dated 21st May 2002 and for that purpose issued a public notice through Advocate Ajit Kulkarni in Daily Newspaper `Pudhari' on 22nd January 2008. The draft of the said notice for cancellation of power of attorney to be published in the newspaper was signed by the applicant and his wife along with others. It is further submitted that in the cross examination of PW-5 i.e. applicant and his wife PW-6 have admitted that they have published paper notice dated 22nd January 2008 for cancelling the power of attorney dated 21st May 2002. It is also admitted in the cross examination of PW-6 that the power of attorney was not cancelled for a reason that the signature was bogus. It was also admitted that the MOU was executed between wife of applicant and respondent no.2 dated 29th December 2010 and in the said MOU Geetanjali Panditrao specifically accepted the legality and genuineness of the said power of attorney. The earlier application preferred by the applicant u/s 319 of Cr.P.C vide Exhibit-101 was rejected on merits by the Trial Court by reasoned order, which was not challenged by the applicant. The respondent no.1 is not connected with the management of company nor have any share or interest in the property of Panditrao family. He has no active or passive participation in the business activity of the company. He is not beneficiary in the income/profit/gain of the said company. The applicant has forged the last page of the original power of attorney dated 21st May 2002 and thereafter filed false case against the accused using forged xerox copy of the power of attorney. The respondent no.1 has filed a complaint before the Chief Judicial Magistrate, Kolhapur vide RCC No.945 of 2012 for offences u/s 406, 464, 420, 467, 468, 474, 499 and 500 of Indian Penal Code. The learned Magistrate had directed investigation u/s 156(3) of Cr.P.C. However, the report is awaited. It is further submitted that the applicant has not shown any cause for directing further investigation belatedly. The Trial Court has therefore rightly rejected both the applications preferred by the revision applicant.

8. After hearing both the parties extensively and also scrutinizing the documents on record the factual aspects which emerge for consideration are that the power of attorney was executed on 21st May 2002. The FIR was lodged on 25th December 2009. The investigation was completed and the charge sheet was filed before

the Court. The charge sheet was filed on 12th February 2011. The prosecution examined seven witnesses and closed the evidence by filing purshis on 26th March 2015 and when the case was adjourned for recording the statement of the accused u/s 313 of Cr.P.C, the applicant preferred applications vide Exhibit-135 and Exhibit-147. The FIR was lodged after a lapse of two years from the cancellation of the power of attorney by the applicant. On perusal of disputed power of attorney it appears that Shriniwas Panditrao, revision applicant, Mrs.Janki Panditrao, Mrs.Vijaylaxmi Panditrao, Mrs.Geetanjali Panditrao and Smt.Ramadevi Panditrao were the parties to the said power of attorney as executants of the said document. The power of attorney appoints Mr.Shrikrisna Anant Panditrao as power of attorney holder. It is also apparent that the power of attorney at the instance of the applicant was executed through his power of attorney holder mother Smt.Ramadevi Anant Panditrao i.e. executant no.6. The signature of Smt.Ramadevi also appears on the power of attorney. Her signature is not disputed and it is not alleged that the said signature is forged and fabricated. Considering the fact that Smt.Ramadevi Panditrao has executed the power of attorney on behalf of revision applicant being her power of attorney holder, the presence of the revision applicant was irrelevant. The respondent no.1 has signed the said document with the remark that he knows the deponents personally. It is not the prosecution case that the respondent no.1 has participated in any of the business transactions or he is the beneficiary towards the alleged transactions. It is also not established that the respondent no.1 is instrumental in preparing the said power of attorney. The applicant in the present application has stated that the power of attorney must always be in the custody or under the domain of the attorney holder. It is contended that the Trial Court has failed to appreciate that the original power of attorney, even assuming that it is genuine and not forged, could never have been in the possession of the executants but would always be in the possession of the attorney holder as the same is always required whenever acting in furtherance of power of attorney. However, in the evidence of the revision applicant recorded by the Trial Court for the first time he has deposed on 2nd May 2014 that the power of attorney is in possession of the respondent no.1. There is nothing on record to indicate even prima facie that the original of the power of attorney is in the possession of respondent no.1. The respondent no.1 in his reply filed before the Trial Court opposing the application u/s 319 stated that the police have given application u/s .169 of Cr.P.C by discharging the respondent no.1 while filing the charge sheet. The revision applicant has earlier preferred application vide Exhibit-101 which was rejected. The said order was, however, not challenged by the applicant before the higher Court. The learned Magistrate while rejecting the application below Exhibit-135 has observed that it is not the case of the complainant that S.D.Kulkarni put his false signature and signature of his wife on the disputed power of attorney. The original disputed power of attorney is not on record. From the evidence of complainant and his wife it is seen that respondent no.1 has only signed on the disputed power of attorney as he knows the deponent. According to the complainant, respondent no.1 has signed as he knows signatures but it is not necessary to mention here that identification is in respect of the person and not in respect of the signatures. It is further observed that on perusal of the power of attorney, it appears that respondent no.1 has put his signature as he knew the deponent and not as he knows the signature of the deponent and hence the allegation made in the application that respondent no.1 has signed on the disputed power of attorney as he knows the signature of the executant of the power of attorney cannot be accepted. It is further observed that in the light of the provisions of Section 319, the Court may proceed against a person who has not been added as accused only when it appears from the evidence that such person has committed any offence. The word evidence has been used in this case. The evidence on record is that of the complainant and his wife Geetanjali. The Court further observed that on perusal of the evidence of complainant it appears that respondent no.1 has signed on the document of power of attorney as he knew the signature of executant and it is also alleged that all the accused in collusion with respondent no.1 has fabricated the document. The wife of the complainant, however, has not uttered a single word against respondent no.1. She deposed that original power of attorney could be with respondent no.1 and the notary has stated that the said document is with respondent no.1. Besides the above evidence, there is no evidence on record to substantiate the said fact. Mere evidence that respondent no.1 has put his signature on the document stating that he knows the executants cannot be the evidence to show that he is party to the crime. The witness has not stated as to what role respondent no.1 has played in the fabrication of document. The complainant has failed to prove the disputed power of attorney. Similarly while rejecting the application for further investigation, it is observed that the investigation was carried out and the charge sheet was filed. Charge has been framed. Evidence of prosecution witnesses has been recorded. The prosecution closed their evidence and now the matter is kept for the statement of the accused u/s 313 of Cr.P.C. The complainant as of right cannot claim further investigation. On perusal of the evidence of the investigating officer it appears that he had issued notice to the accused persons to produce the original power of attorney. The accused stated that they are not having the said document. The investigating officer in clear cut terms has stated that the complainant himself stated after issuance of notice to him that he will produce all the relevant documents. This shows that the investigating officer has made investigation as regards the original power of attorney and therefore after the evidence of prosecution witness is closed, the complainant cannot claim for further investigation when the investigation as regards disputed power of attorney is already conducted by the investigating officer. Be that as it may, even on perusal of the applications preferred by the revision applicant, it cannot be said that a case was made out for further investigation or adding the respondent no.1 as an accused in the said proceedings. It is also pertinent to note that the learned Magistrate has given detailed reasons for rejecting the applications preferred by the revision applicant. The evidence of the investigating officer which is analyzed by the Trial Court while rejecting the application clearly states that the investigation with regards to the power of attorney was carried out and in the circumstances the question of directing further investigation at the belated stage when the evidence of witnesses was recorded and the matter was due for recording the statement of the accused u/d 313 of Cr.P.C does not arise. I do not find any infirmity in the impugned orders passed by the learned Magistrate. The preliminary inquiry report of the Bar Council relied upon by the revision applicant also does not justify the grant of relief u/s 319 of Cr.P.C or u/s 173(8) of Cr.P.C.

9. It also appears that the executants had decided to cancel the power of attorney dated 21st May 2002 and for that purpose public notice was issued through Advocate Kulkarni in Daily Newspaper Pudhari on 22nd January 2008. The draft of the said notice for cancellation of power of attorney to be published in the newspaper was signed by the revision applicant along with others. In the cross examination PW-5 (applicant) and PW-6 (Geetanjali Panditrao i.e. wife of the applicant) have admitted that paper notice was published on 22nd January 2008 for cancelling the power of attorney dated 21st May 2002. It is also admitted in the cross-examination of revision applicant that it is not stated in the notice that the power of attorney is false and forged document. The revision applicant has admitted that he and his wife has signed the said notice. The revision applicant had also admitted that on 11th January 2013, the applicant and the other directors have executed the reconciliation understanding agreement with regards to the mining of bauxite. He also admitted receipt of cheques. It is admitted that MOU was executed between the wife of the revision applicant and Shrikrishna Panditrao (respondent no.2) dated 29th December 2010 and in the said MOU they have accepted the legality and genuineness of the power of attorney dated 21st May 2002. The said admission is appearing in the cross-examination of the wife of revision applicant. The applications were preferred at the end of the trial, and after a lapse of thirteen years from the execution of power of attorney dated 21st May 2002 and about seven years from the date of the cancellation of power of attorney by the revision applicant. In the light of the aforesaid factual aspects, the applicant has not made out any case for setting aside the impugned orders. The learned

advocate for the respondents had relied upon the decision of the Supreme Court in the case of **Rita Nag Vs. State of West Bengal and others** reported in **(2009)9-SCC-129** which deals with the powers of further investigation u/s 173(8) of Cr.P.C. It was observed that the investigating authorities did not apply for further investigation and it was only upon the application filed by de-facto complainant u/s 173(8), the directions were given by the Trial Court to re-investigate the matter. The learned Magistrate was wrong in directing re-investigation on the application made by de-facto complainant and also acceded his jurisdiction in entertaining such application. Reliance is also placed on two other decisions of the Hon'ble Supreme Court in the case of **Ramchandran Vs. R.Uday Kumar and others (2008 AIR (SC)-3102)** and the decision of the Supreme Court in the case of **Mithabhai Pashabhai Patel and others Vs. State of Gujarat (2009)6-SCC-332**. These decisions also relate to the principles to be followed while directing further investigation.

10. Taking into consideration the aforesaid circumstances, the application cannot be entertained and the relief sought in this application cannot be granted. There is no illegality in the order passed by the Trial Court and the application therefore deserves to be dismissed. Hence, I pass following order :

ORDER

(a) Criminal Revision Application No.438 of 2015 is dismissed. No order as to costs.

(PRAKASH D. NAIK, J.)

11. At this stage learned counsel for applicant submits that the Trial Court may be directed not to proceed with the pronouncement of judgment for a period of four weeks. He further submits that the applicant would take appropriate decision whether to challenge this order before Supreme Court and in the event the applicant challenge this order before Supreme Court and in the event the applicant challenges present order, prejudice will be caused to him in case Trial Court proceeds to pronounce the judgment. Learned advocate for respondent no.1 submits that there was no stay of the proceedings before the Trial Court and the trial is pending for pronouncement of judgment.

12. Considering the request made by learned advocate for the applicant, the Trial Court is directed not to pronounce the judgment for a period of four weeks from today.

(PRAKASH D. NAIK, J.)

MST