

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

CRIMINAL WRIT PETITION NO.386 OF 2015

Shri Rajkumar U. Hmenani ... Petitioner

Vs.

The State of Maharashtra & anr. ... Respondents

with

CRIMINAL WRIT PETITION NO.152 OF 2015

Shri Pradeep R. Patole ... Petitioner

Vs.

The State of Maharashtra & anr. ... Respondents

and

CRIMINAL WRIT PETITION NO.524 OF 2015

Shri Avinash R. Hemnani ... Petitioner

Vs.

The State of Maharashtra & anr. ... Respondents

Mr.Harish Adwant i/b Rajiv Deokar for the Petitioner in all WPs
Mr.S.S. Pednekar, APP, for the Respondent – State
Mr.K.T. Kukreja with Rahat Kalpatri, Jabbar Shaikh, Ms.Bhumika
Gada, Suraj Dube i/b Arvind Manghirmalani for Resp. No.2

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: FEBRUARY 12, 2019

P.C.:

1. All these three petitions, filed by the three accused, are taken up together as the issue involved is the same and also the same order is challenged in all the petitions.
2. Respondent No.2 is the original complainant, who has filed criminal case No.197/SW/2010 against the 3 petitioners and one more person, who was a prospective buyer of the tenanted premises. However, respondent No.4 is discharged and therefore, as the case stands only against accused Nos.1 to 3, these 3 accused have filed these separate Writ Petitions for quashing and setting aside the proceedings in Criminal Case No.197/SW/2010 and also for setting aside the order dated 17.11.2014 passed by the learned Sessions Judge in three criminal revision application Nos.729 of 2014, 730 of 2014 and 731 of 2014, thereby confirming the order of framing of charge.
3. The learned Counsel for the petitioners has submitted that it is a matter of civil dispute, however, the complainant has unnecessarily approached the criminal Court. The tenanted premises was earlier in the name of one Hariram Hemnani, who

was the father of the complainant and died on 18.2.1990. He was running a wine shop in the name of partnership with his two cousins and the country liquor licence and foreign liquor licence were obtained by him in the year 1973 and 1975 respectively which stand in his name. After his death, the complainant, who is his daughter, took charge became a tenant. However, as the business was run by accused No.1, she issued power of attorney in favour of accused No.1 on 20.6.2003 and thereafter, in April, 2006, the name of accused No.2 appeared in the rent receipts. The learned Counsel has submitted that all acts were done and transferred by the complainant by executing the power of attorney dated 20.6.2003 in favour of the accused. There was a business conducted in the name by the partnership firm and thus, there is no case of forgery, cheating or criminal breach of trust. If at all, the complainant has any grievance against these transfers, then, the civil Court is the only forum to agitate the same. He submitted that the original accused No.3 Patole is the landlord and he is in no way connected with any transaction and he has transferred the premises bonafide in the name of accused Nos.1 and 2. He has further submitted that accused Nos.1 and 2 have also occupied *bonafide* and has made further transactions. He relied on the final

police report dated 22.3.2011. He pointed out that the police of Bhoiwada police station have filed 'C' summary, however, the learned Magistrate committed mistake in not accepting the same and decided to frame charge. He pointed out that in the evidence before charge, there are important admissions given by the complainant that accused No.1 was running the business nearly for 19 years. He submitted that there is no evidence against the applicant/accused to frame charge either of cheating, forgery or criminal breach of trust.

4. The learned Counsel for respondent No.2 while opposing these petitions has submitted that the complainant has stated in the complaint about commission of offence by these petitioners i.e., accused Nos.1, 2 and 3. He submitted that the fact of execution of power of attorney has specifically been denied by the complainant in her complaint. So also, the allegations of letter of authority was also never issued by the complainant in favour of the accused. The fact of transfer of tenancy and the efforts made by the accused for transfer of the liquor licence are the two glaring examples of criminal breach of trust, forgery and cheating. He submitted that the complainant today has lost his residence and

business and has suffered wrongful loss.

5. Perused the record and proceedings which is produced here. The order dated 27.11.2014 passed by the learned Additional Sessions Judge, Greater Bombay holding a view that the learned Magistrate's findings that the complainant has made out a case to frame charge against accused Nos.1 and 2, is correct. On perusal of the complaint especially paragraphs 8, 9, 10, 12, 14, 16 and 19 of the complaint, it is found that the complainant has specifically denied that she had ever executed irrevocable power of attorney and letter of authority. The trial Court has recorded a lengthy cross-examination before charge. This is a Writ Petition wherein the legality of the orders passed by the trial Court or the Sessions Court can be ascertained without going into appreciation of evidence of facts. Considering the averments made in the complaint and the order passed by the learned Judge, I am of the view that there is a *prima facie* evidence to proceed against the accused Nos.1 and 2 for framing charges as mentioned in the complaint or in the order of the learned Sessions Judge. Accordingly, the Writ Petition Nos.386 of 2015 and 524 of 2015 are dismissed.

6. However, in respect of the landlord, i.e., the petitioner in Writ Petition No.152 of 2015, there is no evidence of forgery and criminal breach of trust and, therefore, he is discharged from those charges. However, he is not discharged under section 420 of the Indian Penal Code. Accordingly, Writ Petition No.152 of 2015 is partly allowed.

7. The trial Court may proceed with framing of charge. All the Writ Petitions are accordingly disposed of.

(MRIDULA BHATKAR, J.)