Vidya Amin.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 741 OF 2019

Prakash D. Walavalkar … Petitioner
vs.
Ashwin Jaywant Shah & Ors. … Respondents

Mr. Sudhan Y. Amare, Advocate for the petitioner.
Mr. Chetan Bane, Advocate for respondent no. 1.
Ms. Nikita Deshmukh i/b. Manjula Rao, Advocate for respondent no. 2.
Mr. A.R. Patil, APP for the respondent/State.

CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 13th February, 2019

P.C. :

Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally and decided at the stage of admission.

2. In this case, the petitioner/original complainant has challenged the order dated 4th December, 2018 passed by the learned Metropolitan Magistrate, 18th Court, Girgaum, Mumbai rejecting the Application moved by the complainant praying for production of certified copies of record and proceedings of Notice of Motion in Civil Suit No. 3373 of 2011 and exhibit the same.

3. It is the case of the petitioner/complainant that he has paid

Rs.8,00,000/- by cheque in the year 2010 to respondent No. 1/husband for the purchase of flat, as promise was given by the respondents/husband and wife that they would sell their flat to the petitioner/complainant. It is the case of the petitioner/complainant that both the husband and wife represented to be the sole owner of the said flat and therefore, the petitioner/complainant has accepted the deal. Now, the complainant had knowledge that siblings/cousins of respondent No. 1/husband have filed Civil Suit claiming the ownership of the said flat and, therefore, the complainant has filed criminal case. In the criminal case, after his examination-in-chief was recorded, he filed pursis of closure of evidence in October/November 2017 and thereafter, statement under section 313 of Cr. P.C. of the respondents was recorded in January 2018 and then in April 2018, the petitioner moved an Application for bringing certified copies of the said Notice of Motion on record, which was rejected.

4. It is argued by the learned counsel for the respondent/accused No. 2-wife that she is not signatory to the cheque and she has no dealing about the said flat with the complainant. She has not received anything. Now the matter is

fixed before the trial Court for final arguments.

5. The learned counsel for the petitioner/complainant submitted that he has served Advocate Mr. Chetan Bane appearing for accused No. 1. He produced the copy of service on the advocate dated 12th February, 2019. The copy of service is taken on record and marked as Exhibit 1. None present for respondent no. 1, so the matter was kept back.

6. The learned counsel for respondent no. 1 was present in the afternoon session.

7. Heard the submissions. Under such circumstances, the order dated 4th December, 2018 passed by the learned Metropolitan Magistrate of rejecting the Application to take certified copies on record, cannot be faulted with. However, at this stage, the learned counsel for the petitioner submitted that he will give Application under section 294 of Cr.P.C. calling upon the parties to admit or deny these documents.

8. The learned counsel for the petitioner may take appropriate

steps as the procedure available to the party under Criminal Procedure Code.

9. Writ Petition is rejected.

(MRIDULA BHATKAR, J.)