

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.916 OF 2018**

Chintaman Sitaram Mogre & Ors.

... Petitioners

Vs

Vyankatesh Kamat & anr.

... Respondents

Mr.K.S. Patil for the Petitioners

Mrs.Vaishali Nimbalkar for Resp. No.1

Mr.N.B. Patil, APP, for the Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 15, 2019

P.C.:

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally at the stage of admission itself. Respondents waive notice through their respective Counsel.

2. This petition is directed against the order dated 23.12.2017 passed by the learned Additional Sessions Judge, Vasai, in Revision Application No.15 of 2017 thereby setting aside the order dated 4.7.2017 passed by the learned JMFC, Thane rejecting the application below exhibit 35 in RCC No.239 of 2011.

3. The petitioners are facing prosecution under sections 420, 465, 471 r/w section 34 of the Indian Penal Code. A private

complaint is filed by the brother of respondent No.1. The offence is pertaining to creating a fabricated or forged resolution by the petitioners, who were the office bearers of the housing society. The brother of respondent No.1 has filed the private complaint before the learned Magistrate at Vasai. In the said complaint, directions were given by the learned Magistrate under section 156(3) of the Code of Criminal Procedure for investigation pursuant to which chargesheet was filed and the case was registered at C.R. No.239 of 2011 and the accused were prosecuted under sections 420, 465, 471 r/w section 34 of the Indian Penal Code. Evidence of the complainant proceeded on 31.3.2016. Thereafter, both PW2 and PW3 were examined on 21.4.2016. On 30.4.2016, the respondent No.1, who is the brother of the complainant, moved application under section 311 seeking permission to step in as a witness and seeking permission to lead evidence. The learned trial Judge has rejected the said application on various grounds. However, the learned Sessions Judge allowed the said application in the revision. The said order of the learned Sessions Judge is challenged and is under scrutiny in this Writ Petition.

4. Court has power to summon any material witness and examine the witness. Such a witness can be examined at any stage. It is true that at the foot of the private complaint, name of the respondent Vyankatesh Annappa Kamat is mentioned. The Investigating Officer could have recorded the statement of the respondent, however, he has not done so. The complainant was aware of the nature of prosecution and the evidence which she wanted to adduce. The chargesheet was filed on 17.4.2012.

5. There is an inordinate delay in moving this application before the Sessions Court and moreover, this person has no locus to move such application. The Court itself can take a note of it and call any person. Secondly, after going through the order passed by the learned Magistrate and also after going through the cross-examination of the complainant recorded on 31.3.2016, I am of the view that the evidence of this witness is required. Hence, the order passed by the learned Sessions Judge is hereby set aside and the order of the learned Magistrate is hereby maintained.

6. Rule made absolute accordingly.

(MRIDULA BHATKAR, J.)