IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1324 OF 2017

Kishor Purushottam Chaudhari & Ors. … Petitioners

Vs.

State of Maharashtra & anr. … Respondents

Mr.Aabad Ponda i/b Maitreya Girish Shukla for the Petitioners
Mr.Y.Y. Dabke, APP, for the Respondent – State
Mr.Subodh desai with Mr.Amit Ghag, Nikhil Mutha, N.Sheth, Ms.Pritika Lobo I/b Nanu Hormasjee & Co. for Resp. No.2

CORAM: Mrs.MRIDULA BHATKAR, J.
RESERVED ON: DECEMBER 6, 2018
PRONOUNCED ON: JANUARY 3, 2019

JUDGMENT:

1. This Writ Petition is directed against the order passed by the learned Metropolitan Magistrate, 61st Court at Kurla, Mumbai on 21..2015 in CC No.422/PW/2009 thereby refusing to discharge the accused from the offences of forgery and cheating punishable under sections 465, 467, 468, 471 /w 34 of the Indian Penal Code and also under sections 420, 120B, 107 and 109 of the Indian Penal Code. The petitioners have challenged the said order of Metropolitan Magistrate by filing Criminal Revision Application No.1004 of 2015, which was dismissed by the learned Sessions Court by order dated 3.12.2016. Hence, this petition.

2. As per the case of the prosecution, the petitioners have committed forgery by preparing three forged rent receipts of electricity meters in respect of three flats 101, 102 and 103 in one Shreyas building on the first floor. The incident of forgery has taken place in March 2008 and have submitted in the name of CVK & Associates, the partnership firm, owned by the petitioners and submitted them to the BEST undertaking for transfer of the electricity meters.

3. Mr.Ponda, the learned Counsel for the petitioners, has submitted that the petitioners have not committed any offence of cheating or forgery. Assuming even if they have prepared the forged documents, yet, it will not amount to forgery or cheating as there is no wrongful loss or gain to either of the parties. He has submitted that the three apartments purchased by the petitioners are of the partnership firm CVK & Associates. They have purchased flat Nos.101, 102, 103 by a registered sale deed dated 13.12.2007, from the owner Dr.Chhaya Satyanand Shastri and Dr.B. Satyanand Shastri, who are the sister and brother in law of the present complainant. By a registered conveyance, which was

executed pursuant to the consent terms dated 2.11.2007 which were filed in Suit NO.1626 of 2006 by CVK & Associates against their vendors Chhaya and Satyanand Shastri where the present complainant Shreyas @ Ashok Pathare as a concurring party. Mr.Ponda submitted that after the sale deed, these three documents were submitted to the BEST undertaking. They were available as they were issued by the complainant or some other person but the petitioners have not fabricated these documents. He relied on the report of the hand-writing expert which is inconclusive. He submitted that this cannot be considered as a forgery in the eyes of law because there is no wrongful loss caused to the complainant. He submitted that the learned trial Court and the learned Magistrate have not considered this aspect and have rejected the application.

4. Mr.Desai, the learned Counsel for the complainant, while opposing this application, has argued that the consent terms on which the sale deed was executed, are challenged by the complainant and so also the execution of sale deed is also disputed by filing the suit for declaration by the original complainant. He has submitted that the registered sale deed is

incomplete and faulty. It was also observed by the BEST authorities and therefore in order to meet this lacuna, the petitioners have fabricated these rent receipts to establish their title and full right over the three flats. He has submitted that the petitioners are fully aware that the complainant and the other co-owners have larger interest in the entire building where these flats are located. By obtaining these forged documents, they wanted to show the transfer is complete and in their favour which is not so as these documents are challenged before the Court. He relied on the statements of Shubhangi Purandare, Chandrakant Chang, Santosh Durvankur, Yogendrakumar Singh and the statement of the complainant. He has submitted that there was no secretary in the said building and never such kind of receipts were issued by the secretary of the said building. These documents are completely fabricated and forged and, therefore, the learned trial Judge, Metropolitan Magistrate and the Revisional Court have rightly rejected this application.

5. The facts of this matter are to be considered on the background of civil litigation and the decisions in the said litigation between the CVK & Associates and Chhaya and Satyanand, the

earlier owners of the flat. It is not disputed that Satyanand is the owner of flat NO.101 and Chhaya is the owner of Flat Nos.102 and 103 in the building known as “Shreyas”, situates at Mahim. They had a dealing with CVK and Associates, a registered partnership firm of the petitioners/accused. As it was not complete, CVK & Associates filed civil Suit No.1626 of 2006, wherein consent terms were filed wherein Shreyas @ Ashok Narayan Pathare, the complainant was the confirming party. However, he subsequently filed Chamber Summons No.654 of 2008 and Notice of Motion No.2689 of 2008 after the consent decree dated 2.11.2007 was filed by the parties. Execution application No.141 of 2008 was filed before the High Court and in the said application, this Court by order dated 2.7.2009/6.7.2009 directed that the partnership firm shall execute sale deed and the addendum thereto in the terms agreed for and on his behalf and defendant Nos.2 and 3 also agreed to do so. The complainant also undertook to execute the sale deed and addendum on or before 10.8.2009. The Court thereafter disposed of the Notice of Motion and execution application and liberty was given to the applicant to take steps in accordance with law in respect of the other co-owners. Pursuant to that, a deed of declaration was registered on 13.1.2010 unilaterally. However, as on today, there is no order in respect of the cancellation of the said deed.

6. The documents before the Court are two receipts of flat Nos.101 and 102 dated January, 2008 of Rs.650/- towards property tax and repair cess. Another receipt is of 12.3.2008 for Rs.1,500/- for flat No.101 and 102. These receipts are signed by the same person and the other receipts are signed by Shreyas Pathare, the complainant. There is one letter dated 31.1.2008 written by Vasant Deo, one of the partners and one of the accused Ashok Pathare, requesting to give no objection certificate for commercial use of the premises. There is also a letter written by CVK and Associates to commercial engineer B Department, informing them that they have purchased the flats which were not in use for last 2 to 3 years. The meter is faulty and they undertook to pay necessary charges and requested that the charges may be debited from their account. As per the statements of the witnesses, some documents are required by BEST to give electricity meter in the name of the party. The evidence of Yogendrakumar shows that these documents were presented and accepted. One of the witnesses stated that it is given by Vasant

Deo, who is one of the accused persons. However, there is no evidence of committing forgery against all the three though there is evidence that because of the use of these receipts, the firm is going to be a beneficiary. However, the report of the hand-writing expert is inconclusive and there is no direct evidence disclosing that who has prepared the forged document. But there is evidence of use of the forged documents by Mr. Vasant Deo.

7. The case of the complainant is that he and his co-owners were having larger interest in the property where the flats are situated. The ownership of Mr. and Mrs.Shastri is not disputed. Therefore, in view of the registered sale deed, which is executed as per the order of the High Court, it cannot be said that the title was transferred because of the use of the rent receipts. The only advantage would have been that the procedure of transfer of the matter would have been smooth.

8. In this case, the complaint is filed against three applicants/accused. The CVK & Associates is a partnership firm. The forged receipts are issued in the name of CVK & Associates. U/s 11 of the Indian Penal Code, unlike a Company, Partnership Firm is not a legal identity and, therefore, it cannot be prosecuted

but its partners are prosecuted in their individual capacity. So, it is necessary to find out who has forged or fabricated the documents and who has used the forged document as genuine and committed the offence under sections 465, 467, 468 and 471 of Indian Penal Code. Whether all of them have committed offence under section 120B, 107 and 109 of the Indian Penal Code.

9. Section 465 is the offence of forgery, which is defined under section 463. So, a person should make a false document with intention to cause injury to public or person to claim his title and he should commit forgery with intent to commit fraud. In the present case, whether damage was caused to the complainant or his claim or title in respect of his property is to be ascertained at the time of trial. So what is contemplated under section 463 is the intention to cause injury or damage to a person.

Section 467 is a forgery of a valuable security, will, etc. In the present case, the property transferred is a meter i.e., movable property.

Section 468 is a forgery for the purpose of cheating so it should show causing wrongful gain to the accused.

Section 471 states that the use of a forged document as genuine. In the present case, there is evidence on record about making of a forged document. The police have not collected any evidence against the accused persons of forgery. Even the hand-writing expert's evidence is not useful to the prosecution. However, considering the communication between CVK & Associates and the complainant and BEST undertaking, there is evidence of use of forged document for transfer of electricity meter and the forged document was used for transfer of the movable property in the name of partnership firm of the accused person i.e., CVK. Thus, this partnership firm is a beneficiary and undoubtedly, to frame charge there should be some material against the individual accused. Unless there is a specific evidence against each one of the accused, the charge cannot be framed under the specific heads of the Indian Penal Code. In the present case, Mr.Vasant Deo, one of the petitioners, has submitted the application to BEST Undertaking alongwith the documents and therefore, it can be said that there is prima facie evidence against Mr.Deo that he used forged document as genuine having knowledge that it is forged. However, there is no evidence as such against the other two.

10. The submissions of Mr. Ponda that when there is no offence of forgery under section 465 of Indian Penal Code, then there is no offence under section 471; cannot be appreciated at this stage. There is prima facie evidence that three receipts are forged and thus, there is existence of forged documents and, therefore, a person who makes the use of forged documents with knowledge can be charged for the offences punishable under section 471 of Indian Penal Code. Therefore, prima facie, there is evidence that Mr.Deo has used those forged documents to get the meter transferred in the name of partnership firm and thus, there is evidence against him to frame charge. However, there is no evidence against the other two accused, hence they are discharged.

11. Writ Petition is thus partly allowed. Accordingly, the order dated 21.7.2015 passed by the learned Metropolitan Magistrate 61st Court, Kurla, Mumbai in C.C. No.422/PW/2009 and the order dated 3.12.2016 passed in Revision Application No.1004 of 2015 passed by the learned Sessions Judge, Mumbai are quashed and set aside partially to the extent of offence of forgery in respect of all the three accused as under:

a) The Petitioner Nos.1 to 3 are discharged from the offence of forgery under sections 465, 467, 468 r/w sections 34, 120B, 107, 109 of the Indian Penal Code;

b) Petitioner Nos.1 and 3, namely, Kishor Purushottam Chaudhari and Ashok Kumar Pradhan are also discharged from section 471 of the Indian Penal Code.

c) However, the application of petitioner No.2 Vasant Vishnu Deo for discharge with regard to the offence punishable under section 471 is hereby rejected.

12. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)