

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

CRIMINAL APPLICATION NO. 727 OF 2018

Smt.Jyoti @ Anita Deepak Khatri

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr.A.S.Rao for the Applicant.

Mr. A.R.Patil, APP for Respondent No.1-State.

Mr.Ganesh Gole I/b. Mr.Ritesh Ratnam for Respondent No.2.

Mr.M.V.Chaudhari, API, Ulhasnagar Police Station, Thane City.

**CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 18 FEBRUARY 2019**

P.C.:

1. In this Criminal Application, the applicant/accused has challenged the order dated 16th May, 2018 passed by the learned Judicial Magistrate First Class, Court No.2, Ulhasnagar below exhibit 19 in R.C.C. No. 100 of 2014 by which the learned Magistrate by invoking the powers under section 319 of the Code of Criminal Procedure (for short "Cr.P.C.") has issued process against the applicant/accused under sections 420, 406, 465, 467, 468 read with 34 of the Indian Penal Code.

2. Heard submissions of the learned counsel for the applicant/accused so also the learned APP and the learned counsel for respondent No.2 i.e., the original complainant.

3. An application was moved by the prosecution at the instance of the original complainant that the applicant/accused, who is a wife of the main accused, to be made an accused No.2. The share certificates owned by the deceased mother of the complainant and the main accused were fraudulently transferred by the main accused in his name after the death of their mother. The amount paid out of this transaction was transferred from the Demat account and it was received by the main accused. Thereafter, the main accused i.e., husband transferred the same to the Demat account of the applicant/accused i.e., wife. The applicant/accused was not an accused when the offence was registered at C.R. No. 272 of 2013 with Ulhasnagar Police Station only against the main accused i.e., brother of the complainant.

4. The powers under section 319 of the Cr.P.C. are invoked by the learned Magistrate after receiving the chargesheet against the main accused. There is no bar for invoking the powers at a later stage if the

evidence is produced against the applicant/accused.

5. Perused F.I.R., statements in the chargesheet of the witnesses and the complaint. The fact that the share certificates were transferred from the Demat account of the main accused i.e., husband to the Demat account of the applicant/accused i.e., wife is not disputed by the applicant/accused. Hence, this particular act itself cannot be said a forgery unless specific allegations of the act are made against the applicant/accused.

6. On perusal of the statement of the complainant, I have not come across any such act of forgery or cheating attributing to the applicant/accused.

7. It is to be noted that the powers under section 319 of the Cr.P.C. can be invoked by the Court at any stage of the inquiry as well as the trial, if the evidence is produced. However, there should be evidence before the Court to come to a conclusion. The reasoning given by the learned Magistrate is not satisfactory, as there is no such evidence at this stage on record against the applicant/accused.

8. Under such circumstances, the order of issuance of process dated 16th May, 2018 passed by the learned Judicial Magistrate First Class, Court No.2, Ulhasnagar is quashed and set aside.

9. Criminal Application is allowed and accordingly disposed of.

(MRIDULA BHATKAR, J.)