IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3065 OF 2018

Vivek Prannath Talwar]
Age- 59 Years, residing at]
17-B, IL Palazzo Co-operative]
Housing Society Ltd. Giibs Road,]
Malbar Hill, Mumbai- 400006.] ..... **Petitioner**

VERSUS

The State of Maharashtra
(at the instance of Central Bureau]
of Investigation/Economic Offence]
Wing, EOW, 4th Floor, Universal]
Insurance Building, Sir P.M. Road]
Fort, Mumbai- 400001)] ..... **Respondent**

Mr. Ashok M. Bhatia, Advocate for petitioner.
Mr. A.R. Patil, APP for State.

CORAM : <u>S. S. SHINDE</u>
DATED : 3rd June, 2019.

<u>JUDGMENT</u>

1. Being aggrieved by the order dated 24.03.2014 rejecting the criminal revision application no. 869 of 2014 this petition is filed.

2. The City Civil Court and Sessions Court at Bombay has mentioned detail facts in Para 2 to 9 of the impugned judgment. As and when it is necessary, reference can be made to those facts.

3. Learned counsel appearing for the petitioner submits that in the entire charge sheet there is no material of any nature what so ever to sustain charge against the petitioner for the alleged offence punishable under sections

420, 465, 468, 471 r/w. 120 (B) of Indian Penal Code. From bare perusal of entire charge sheet and statements of various witnesses recorded by the concerned police officer, it is crystal clear that no specific overt act even remotely attributed to the petitioner with respect to the alleged commission of said offences. The Sessions court did not appreciate that the flat in question i.e. Flat No. 2C in the said society originally stood in the name of Mr. William D'souza, who was the original owner, retired ACP Mumai Police and that after his death in the year 2000, there were many litigations filed against family members of deceased William D'souza. In view of said pending litigations said flat could not have been mortgaged with the Punjab National Bank by Mrs. Mary @ Kamala William D'souza (accused no. 7) as the said flat at the time of alleged mortgage was not standing in her name. It is submitted that the said alleged mortgage with the Punjab National Bank created by accused no. 1 to 8 was not within the knowledge of present petitioner, and it was incumbent upon said Bank to verify the said 'No Objection Certificate dated 24.03.2006' given by the society, with the office of society before creation of alleged mortgage. It is submitted that since the society became aware that accused no. 1 to 8 have illegally mortgaged the said flat situated in the society on the basis of false and fabricated documents for the purpose of cheating, the said society immediately vide its letter dated 24th July 2008 addressed to the said bank informing that the society had never issued 'No Objection Certificate dated 24.03.2006' allegedly for creation of mortgage of the said flat with the Bank. It is submitted that from the records and taking the prosecution case as its face value, it is crystal clear that the said loan was procured from the bank on the strength of forged and fabricated documents by Accused No. 1 to 8, of which the Petitioner is not aware. On the contrary in the Year 2010, when Mr. Ashok Gupta approached the society to gather facts of the case and for obtaining 'No Objection Certificate' for the purchase of said flat from Mrs. Mary @ Kamala William D'souza (Accused No. 7) the petitioner clearly informed him and the legal heirs of the deceased original owner to get the stay vacated by the Hon'ble High Court and also obtain court orders for transfer in respect of the said flat in view of various litigations pending in the Hon'ble High Court at Bombay and that if he is able to settle all the claimants in Court, only then the society will transfer the said flat in his name.

4. Sum and substance of argument of learned counsel appearing for petitioner is that, the petitioner cannot be even remotely connected to the commission of the alleged offences in as much as the transfer of said flat in the name of Mr. Ashok Gupta (Accused No. 11), was effected by decision of committee, wherein the petitioner was a Chairman of the said society and the transfer of the said flat was effected in the name of Ashok Gupta (Accused No. 11) after following prescribed procedure in accordance with law for transferring the said flat. As no overt act can be attributed to the petitioner in the charge sheet and the fact that the petitioner was not named in the FIR itself reveals that, he

has been falsely implicated in the aforesaid case for the reasons best known to Investigating Officer. It is submitted that even assuming that, No Objection Certificate for transferring the flat was given by the petitioner, the petitioner had no knowledge that the Bank has taken symbolic possession of the said flat due to non payment of loan taken by said William D'souza. Therefore, learned counsel appearing for the petitioner submits that, petition may be allowed.

5. On the other hand learned counsel appearing for respondent invites attention of this Court to the reasons assigned by the Sessions Court in the impugned judgment and submits that prima facie it is transpired during the investigation that the petitioner had knowledge that the Punjab National Bank has taken symbolic possession of the flat, however, petitioner gave No Objection Certificate for transfer of said flat. It is submitted that, the petitioner and other accused conspired with each other and the petitioner gave No Objection Certificate to transfer the said flat in favour of Mr. Ashok Gupta (Accused No. 11).

6. Heard learned counsel appearing for the petitioner at length. Perused reasons assigned by the Sessions Court in the impugned judgment. The Sessions Court has made reference to the investigation papers. It appears that statements of various witnesses were recorded. The prima facie conclusion has been recorded by the Sessions Court that though the petitioner had knowledge about symbolic possession taken by the Punjab National Bank of the said flat, the petitioner who

is Chairman of society gave 'No Objection Certificate' to transfer the said flat. It is also recorded by the Sessions Court that investigation papers prima facie discloses that accused conspired with each other and as a result flat was transferred in favour of Mr. Ashok Gupta (Accused No. 11). The Courts below have referred to the material collected during the investigation by the Investigating Officer. The Sessions Court has expressed prima facie opinion that the petitioner had knowledge that the said flat was mortgaged with the Punjab National Bank and Bank had taken symbolic possession of the said flat, however, the petitioner gave 'No Objection Certificate' to transfer the said flat in favour of Mr. Ashok Gupta (Accused No.11). Whether the petitioner had conspired with other accused, and knowing that said flat was mortgaged with Bank and symbolic possession of said flat has been taken by the Bank, the petitioner gave no objection the transfer the said flat in the name of Mr. Ashok Gupta (Accused No. 11), is the matter to be considered at the time of an appreciation of evidence. However, prima facie case is made out against the petitioner. In that view of the matter, no case is made out to grant any relief in favour of the petitioner. Hence petition stands rejected.

7. The observations made hereinabove are prima facie in nature and confined to the adjudication of the present petition only.

[S.S. SHINDE, J.]