

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

WRIT PETITION NO. 4578 OF 2014

Mr.Vimal Ratanlal Didwania

...Petitioner

Versus

Mr.Namdeo Bharma Gharat & Anr.

...Respondents

.....

Mrs.Manjula Rao I/b. Ms.Rashmi Gagwani for the Petitioner.

Mr.Kuldeep S.Patil for Respondent No.1.

Mrs. M.M.Deshmukh, APP for Respondent No.2-State.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: 05 FEBRUARY, 2019**

P.C.:

1. This Petition is directed against the order dated 16th March, 2009 passed by the learned Judicial Magistrate First Class, Panvel thereby issuing process under sections 420, 465, 468, 471 read with 34 of the Indian Penal Code as well as the order dated 6th August, 2014 passed by the learned Sessions Judge, Raigad-Alibag thereby dismissing Criminal Revision Application No. 132 of 2012.

2. Admittedly, there was a transaction between the mother of the complainant and the accused person i.e., petitioner. An Agreement to Sell dated 12th December, 2006 was executed between the parties and some part of the amount was paid. However, the mother of the complainant had expired on 31st May, 2007 and thereafter, the petitioner/accused executed a Sale Deed on 16th February, 2008 in his favour, as he was given irrevocable Power of Attorney by the deceased mother of the complainant.

3. The learned counsel for the petitioner/accused has submitted that as per registered Agreement to Sell, some part of the amount was paid by the petitioner/accused to the deceased mother of the complainant. She has further submitted that the complainant was not ready to execute the Sale Deed, as he wanted and demanded more money. She has pointed out the receipt dated 12th December, 2006 issued in favour of the complainant's mother. She has further submitted that it was a genuine transaction for which the process ought not to have issued.

4. The learned counsel for respondent No.1 while opposing this Petition, has pointed out that the Sale Deed was executed subsequent to the death of the mother of the complainant, which is on the basis of the irrevocable Power of Attorney. He has submitted that the said Power of Attorney has come to an end after the death of the mother of the complainant. He has further submitted that the petitioner/accused had executed the Sale Deed in his favour and the money was also given to himself.

5. Perused impugned orders. Also perused the complaint. There are averments in the complaint making out case to issue process for the relevant sections. The order passed by the learned Magistrate of issuance of process and the order passed by the learned Sessions Judge confirming the order of issuance of process cannot be faulted with. Both the impugned orders are maintained.

6. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)