

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

**CRIMINAL REVISION APPLICATION No. 698 OF 2018
WITH
CRIMINAL APPLICATION No. 666 OF 2018
IN
CRIMINAL REVISION APPLICATION No. 698 OF 2018**

Smt. Khatija Mohd.Rangwala

...Applicant

Versus

State of Maharashtra

...Respondent

Mr.Murtaza Nazmi a/w. Mr.S.K.Chaurasia i/b. SKC Legal for the Applicant.
Mr. A.R.Patil, APP for the Respondent-State.

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

P.C.:

1. In this Revision Application, the order dated 16th October, 2018 passed by the learned Addl. Sessions Judge, Sessions Court, Gr. Mumbai, remanding Criminal Appeal No. 227 of 2012 and directing to pass fresh judgment after recording evidence, is challenged.

2. The applicant/ accused is convicted for the offence of forgery under sections 468 and 471 of the Indian Penal Code and also under sections 12(1)(B) and 12, 2 (1A) (a) of the Indian Passport Act by order dated 24th

August, 2012 passed by the learned Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai. The maximum punishment of two years for the offence of forgery and payment of fine is awarded to the applicant/accused.

3. As per the case of the prosecution, there is forgery of an affidavit filed by the applicant/accused to the Passport Office declaring herself as Indian national though she was initially Pakistani national before her marriage with a view to obtain Indian passport. The original affidavit has not come on record till today. The said original affidavit i.e., disputed document was not before the trial Court or the Sessions Court at any time.

4. The learned counsel for the applicant/accused has submitted that the learned Sessions Judge with a view to fill up the lacuna should not have passed an order of remand and retrial.

5. The learned APP while opposing this Revision Application, has submitted that the applicant/accused has already convicted by the order of the learned Magistrate. The order passed by the learned Sessions Judge is correct.

6. According to the learned Sessions Judge, a proper procedure was not followed by the learned Magistrate of taking secondary evidence i.e., photocopy of the document, on record. The issue involved in this Revision Application is very short and, therefore, it can be disposed of at the stage of admission. The learned Sessions Judge instead of remanding the matter ought to have recorded the evidence in respect of taking the secondary evidence on record or would have directed the learned Magistrate to record the said evidence in respect of compliance of section 65 of the Evidence Act of taking secondary evidence on record by keeping appeal alive. Hence, this Revision Application is partly allowed with following order :

ORDER

(i) The order dated 16th October, 2018 passed by the learned Addl. Sessions Judge, Sessions Court, Gr. Mumbai is hereby quashed and set aside;

(ii) The learned Sessions Judge may give directions to the learned Magistrate to record the evidence only on the point of allowing the secondary evidence on record i.e., photocopy of the affidavit or the learned Sessions Judge himself may

record the evidence of the witness, who has produced the photocopy of the said affidavit. After recording the said evidence in appeal, the learned Sessions Judge shall hear and decide the appeal.

(iii) Parties to appear before the learned Sessions Judge on 4th March, 2019 at 11.00 a.m.

7. In view of disposal of Criminal Revision Application, Criminal Application does not survive and the same is accordingly disposed of.

(MRIDULA BHATKAR, J.)