

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5 OF 2019

MUKTAR @ MUKHTIYAR S/O.MOHAMED BASHIR)
)...PETITIONER

V/s.

HAMJA MAHAMAD MALPEKAR)...RESPONDENT

Mr.Rushikesh Kale i/b. Mr.R.D.Suryawanshi, Advocate for the
Petitioner.

Mr.Chandrakant Solaskar i/b. Mr.Sudhir Prabhu, Advocate for
Respondent No.1.

Mr.Laxmikant Shrimangale, Advocate for the Respondent No.2.

Mr.S.V.Gavand, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 13th JANUARY 2020

P.C. :

1 By this petition, the petitioner/accused no.2 is
challenging the order dated 26th November 2015 passed by the

revisional court thereby rejecting his revision petition and confirming the order directing issuance of process against the accused persons.

2 Heard the learned counsel appearing for the parties and perused the impugned revisional order as also the order dated 10th June 2014 passed by the learned Judicial Magistrate First Class, Ratnagiri, directing issuance of process for offences punishable under Sections 406, 468, 471, 419, 420 read with 34 of the Indian Penal Code.

3 It is alleged by the complainant/respondent herein that accused no.1 is a businessman residing at Village Kuve, Taluka Lanja and accused no.2 i.e. the present petitioner Muktar Ahemad is a businessman residing in Kolar District of Karnataka State. As per averments made in the complaint, accused no.1/respondent no.2 herein had proposed respondent no.1 herein to develop 18 gunthas of land situated at Udyamnagar, Ratnagiri with an assurance that he would convince the owner of the property and had helped him in complying legal formalities.

Thereupon, Power of Attorney executed by the owner was shown by the accused no.1 to the complainant and he was represented that the land owner had authorized him to execute the Development Agreement. However, later on it was revealed that Murli Krushna was not the owner of the land and by forging the documents, he was shown as the owner of the land.

4 The learned revisional court in paragraph 10 of the impugned order has categorically held that the petitioner/accused no.2 had kept quiet for two years after execution of the Development Agreement and allowed the complainant to construct the apartment and subsequently by visiting the site, he has claimed ownership over the property. The revisional court further found that record revealed that the Power of Attorney, on the basis of which accused no.1 executed Development Agreement in the property in question in favour of the complainant, was forged and fabricated and it was the petitioner/accused no.2 who informed the complainant that photograph affixed on the Power of Attorney is that of his but not that of Murli Krushna, Director of

Sunship Company. He further informed the complainant that the signature bearing on Power of Attorney is also forged.

5 On the basis of this finding of facts, the revisional court came to the conclusion that there are sufficient grounds for proceeding against all accused persons including the petitioner/ accused no.2.

6 It is seen that the complaint was accompanied with documents including irrevocable Power of Attorney, photographs on the PAN card etc. and on the basis of material placed on record, the order directing issuance of process came to be issued which was confirmed by the revisional court.

7 Considering limited scope of entertaining such revisional order in writ jurisdiction, as no perversity or illegality is shown in the impugned order, the petition is devoid of merits. The same is therefore rejected.

8 The learned counsel for the petitioner submitted that as the petitioner/accused no.2 is from Karnataka, his personal attendance before the learned trial Magistrate may be dispensed with. The petitioner can apply for dispensing with his personal attendance by filing necessary application for exemption and if such an application is filed, then the learned trial court may consider the same on its own merit.

(A. M. BADAR, J.)