

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 358 OF 2017**

Anand R. Bombale ...Petitioner
V/s.
Shankar Laxman Dhakane and anr. ...Respondents.

Mr. Shriram Kulkarni for the Petitioners a/w. Mr. Pranjal Khatavkar and Mr. Sujay Palshikar for the Petitioner.
Mr. Satyajeet P. Dighe for Respondent No.1.
Mr. Y. Y. Dabke, APP for the Respondent No.2- State.

CORAM : N.R. BORKAR, J.

**RESERVED ON : 22.07.2022.
PRONOUNCED ON : 14.10.2022.**

ORDER

1] This petition takes an exception to the common judgment and order dated 18 October 2016 passed by the learned Additional Sessions Judge, Nashik in Criminal Revision Application No.174 of 2016 and Criminal Revision Application No.214 of 2016. By the impugned judgment and order, the learned Additional Sessions Judge dismissed the revision application filed by the present petitioner against the order dated 2 March 2016 passed by the learned Judicial Magistrate, First Class, Nashik (for short "J.M.F.C.") in Regular Criminal Case No.1010 of 2016.

2. Respondent No.1 herein has filed the complaint case against the present petitioner and other co-accused for the offences punishable under Sections 406, 467, 468, 420, 120-B and 34 of the Indian Penal Code (for short "IPC") alleging that

the present petitioner along with other co-accused prepared the forged Will dated 31 January 2008. It is alleged that the purported executrix of the Will viz., Narmadabai B. Bodke was on the date of alleged execution of the Will, i.e., on 31 January 2008 was admitted in Sahara Medi Line Hospital, Nashik and she was in I.C.U. and was discharged from the hospital on 15 February 2008. It is alleged that in view of health condition of executrix, it was not possible for her to execute the Will dated 31 January 2008.

3. The learned J.M.F.C. after recording the verification of respondent No.1 issued the process against the present petitioner and other accused for the offences punishable under Sections 465, 467, 468, 471 read with 34 of the IPC.

4. I have heard the learned counsel for the petitioner, learned counsel for respondent No.1 and learned APP for the respondent – State.

5. The learned counsel for the petitioner submits that the only allegation against the present petitioner, who is an Advocate, is that he identified the executrix. It is submitted that there are no allegations that the present petitioner conspired with other co-accused especially beneficiary in preparing the alleged forged Will. It is submitted that the learned J.M.F.C. thus erred in issuing the process against the present petitioner. The learned counsel for the petitioner thus submits that the order impugned as well as the order of the

learned J.M.F.C. to the extent of issuing process against the present petitioner needs to be quashed. In support of his submissions, the learned counsel for the petitioner has relied upon the judgment of this Court in ***Mohan s/o. Premnath Kothimbire vs. The State of Maharashtra and ors.***¹.

6. On the other hand, the learned counsel for respondent No.1 submits that the purported executrix was not real Narmadabai Bodke. It is submitted that even if according to the petitioner the purported executrix was introduced to him by one of his acquaintance as Narmadabai Bodke, the petitioner ought to have asked her to show him identification documents and then only he should have identified her. It is submitted that considering the facts and circumstances, no interference is called for in the order impugned.

7. This Court in *Mohan Kothimbire (supra)* has held that :

“8. Going through the whole charge sheet, there does not appear any material to show that the applicant, an Advocate, entered into any conspiracy with any of the other accused in getting prepared solvency certificates without letting the real farmers know that any such 7/12 extracts are being taken from the Talathi or the solvency certificate is being taken. There is no material to show that the applicant was acting in furtherance of common intention with any of the accused so as to rope him in the matter with the help of Section 34 of IPC. Other than the applicant endorsing the affidavits for identifying the persons, there is no material to show that the applicant was knowing that the persons were somebody else and still identifying them as the concerned farmer. Identification of a person per se is not incriminating to either show conspiracy or that the Advocate was acting in furtherance of common intention. Unless the investigation shows material collected clearly pointing out that the Advocate was purposely identifying a wrong person or had knowledge that the person was not the real person or that he

1 2014 ALL MR (Cri.)4847

had any concert with other accused persons to cheat or commit forgery, the prosecution cannot be maintained keeping in view observations of the Hon'ble the Supreme Court."

8. In ***Hiralal Jain vs. Delhi Administration***², the Hon'ble Supreme Court has held:

"9. Admittedly, the appellant has neither impersonated nor committed any forgery. The real charge against him is that of conspiracy under S.120-B IPC. But there is no prima facie evidence in respect of this charge. The documentary evidence only shows that the appellant made application on behalf of the other accused, that he filed his Vakalatnamas and that he identified them as the real claimants. It is well known that the income of many lawyers in the District Courts is derived from the work of identifying persons and sureties in the Courts. The other accused must have told the appellant that they were the real claimants. He believed them and agreed to act for them. It seems to us that he did nothing beyond what a lawyer is authorized to do in a Court of Law. There is no evidence to suggest that he had previous knowledge of the fact that the accused were not the rightful claimants. Again, there is no evidence whatsoever that there was any concert between him and the other accused antecedent to the filing of the applications and Vakalatnamas in Court by him. In the absence of such evidence, it cannot be said that there is prima facie evidence for the offence of conspiracy against him."

9. In ***Brijendrakumar vs. Prakash and ors.***³, this Court in paragraph 14 and 19 has held :

"14. it may be said that identification of an individual on an affidavit by a counsel is a matter of serious concern and the Advocate concerned should not lightly endorse the identification certificate without first satisfying himself about the identity of the person. However, in dealing with a case of the nature as the instant one, I am not inclined to go into the ethics of the responsibility to be followed by the Advocate at the time of identification, but I am only supposed to see whether it discloses any criminal misconduct and criminal intention on the part of the Advocate in identifying a false person."

² AIR 1972 SC 2598

³ 1984 Cri.L.J.421

"19. There is no basis for the allegation that the applicant-accused had identified a person falsely knowing that the person being identified was not that person and further there is no substance in the allegations that the accused-applicant tendered such false person before the Clerk Shri Pawade for the purpose of identification. In my opinion, therefore, this is a fit case where inherent power can be invoked to interfere with the order passed by the trial Court to meet the ends of justice and to avoid the abuse of the process of law."

10. In the present case also, perusal of the complaint does not show that there was any concert between the petitioner and the other co-accused prior to execution of the alleged forged Will. The complaint also does not show that the petitioner was knowing that the purported executrix was not the real Narmadabai and inspite of it, he identified her. In absence of such allegations, the learned J.M.F.C. was not justified in issuing the process against the present petitioner with the aid of Section 120-B or 34 of the IPC. The orders impugned therefore, cannot be allowed to stand. In the result, the following order is passed.

ORDER

A] The order dated 2 March 2016 passed by the learned J.M.F.C., Nashik in Regular Criminal Case No.1010 of 2016 and the impugned judgment and the order dated 18 October 2016 passed by the learned Additional Sessions Judge, Nashik are hereby quashed and set aside *qua* the present petitioner.

B] Writ Petition is allowed in the aforesaid terms.

(N.R. BORKAR, J.)