

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

CRIMINAL WRIT PETITION NO. 3606 OF 2019

Mrs. Pramila Sumansingh Thakur .. Petitioner

Vs.

The State Of Maharashtra & Ors. .. Respondents

Mr. Prashant S. Thombre, Advocate for the Petitioner.
Mr. Arfan Sait, APP for the Respondent No.1-State.
PSI R. R. Ghadigaonkar, Dadar Police Station, Mumbai,
present.

**CORAM : PRAKASH D. NAIK, J.
DATE : 6th JULY, 2022**

PC.

1. The petitioner has challenged order dated 10th January, 2018 passed by the Court of Learned Additional Chief Metropolitan Magistrate 5th Court, Dadar, Mumbai in C.C. No.119/SW/2017 and order dated 29.10.2018 passed by Additional Sessions Judge, Greater Mumbai in Criminal Revision Application No. 246 of 2018.

2. The petitioner has filed private complaint before Court of Metropolitan Magistrate, 5th Court, Dadar, Mumbai viz C.C. No.

119/SW/2017. It was alleged that the complainant learnt about the electricity connection/supply and installation of meter on her property. She filed an application under Right to Information (for short "RTI") Act with BEST undertaking and obtained the documents. On the basis of which meter was installed in the property which is in the name of Abhik Shantilal Boricha. After going through the documents, it was revealed that such premises was not in existence. The documents submitted by accused were false and fabricated. The accused submitted documents viz application for supply of Energy, Indemnity Bond, General Power of Attorney dated 17.12.2008, Affidavit dated 13.10.2008 and Ration Card, despite knowing that connection is false. The accused had acted in connivance with each other. When the complainant visited the premises, it was found that at the end of common passage behind shop No. 7, on ground floor of 'A' Block, extension of approximately 5x8 feet was constructed. Illegal structure was constructed by the accused and false documents were prepared with a motive of taking advantage during re-development. The new electricity meter was installed by relying on false documents for non-existing

premises. Complaint was filed with BEST undertaking. Action was taken by BEST and electricity meter was removed. Affidavit dated 13.10.2008 is executed between accused No.1 and 3. It is false document. Indemnity Bond dated 23.12.2008 executed by Mr. Abhik Boricha and witnessed by his father Mr. Shantilal Boricha was fabricated document. Complaint was filed with Dadar Police Station on 07.06.2017. However, Police did not register FIR. Investigation may be directed by invoking power under Section 156(3) of Cr.P.C. The accused have committed an offence punishable under Sections 420, 465, 467, 468, 471, 474 read with 34 of the Indian Penal Code (for short "IPC").

3. The learned Additional Chief Metropolitan Magistrate 5th Court, Dadar, Mumbai refused to grant prayer of investigation under section 156(3) of Cr.P.C. and liberty was granted to the complainant to proceed with the matter for verification vide order dated 10.01.2018. The said order was challenged before Sessions Court by preferring Criminal Revision Application No. 246 of 2018. Vide order dated 29.10.2018, the Revision Application was rejected.

4. The learned Additional Chief Metropolitan Magistrate while declining the prayer for investigation in accordance with Section 156(3) of Cr.P.C., vide order dated 10.01.2018 had observed that the documents are of year 2008. The complainant did not take any steps since 2008. Considering the documents filed on record, the Court found that reason made out by complainant for referring the matter for investigation under Section 156(3) of Cr.P.C. The purpose of complainant can be served by proceeding further for verification of the complainant. In the order dated 29.10.2018 passed by the Sessions Court it was observed that the complaint was filed on 13.09.2017 i.e. after six years on getting copies of documents. The complainant had received the relevant documents on 07.07.2011. Even thereafter, the complainant waited for about six years for initiating the proceeding for investigation. The complainant had claimed that she was under treatment but could not bring sufficient material to support this contention. There is inordinate delay in initiating criminal prosecution.

5. Learned advocate for the petitioner submitted that the accused are involved in fabricating documents for obtaining electricity connection in respect to non-existence premises. The investigation is required to be conducted by Police. The offence is of serious in nature. Complaint was made to the Police. Cognizance of complaint was not taken. Cognizable offence is made out in the complaint. Police failed to take cognizance of complaint. The learned Magistrate and the learned Session Court rejected the prayers sought by complainant on the ground of delay. The investigation cannot be refused only on the ground of delay. Thorough investigation is required to be conducted. The Court below has committed errors in passing impugned orders. The Court ought to have directed the investigation under Section 156 (3) of Cr.P.C. The forgery of documents is required to be investigated by Police. Documents were created by the accused for wrongful gain. Delay was explained by the complainant. The property was not in existence. Letter dated 16.12.2017 issued by Rationing Department to the complainant refers to the fact that the demand was made with the accused for ration card and documents relating to the property. The

accused produced the Ration Card but did not produce any other documents by stating that the documents are not available.

6. I have perused the documents on record. The documents in question were allegedly created in 2008. According to the complainant she received the documents through RTI. The complaint was made to Police on 07.06.2017. Private complaint was filed for investigation in 2017. The learned Metropolitan Magistrate has refused to direct the investigation under Section 156(3) of Cr.P.C. it was observed that the documents are of year 2008 and the complainant did not take any steps. Considering the documents filed on record there no reason is made out by the complainant for referring the matter for investigation. Considering the factual aspects of this matter, there is no infirmity in the orders passed by learned Metropolitan Magistrate and Sessions Court. It is pertinent to note that the complaint has not been dismissed. Investigation under Section 156(3) of Cr.P.C. has been refused but the other option is kept open. The complainant was given an opportunity to proceed with the matter for verification. Learned Metropolitan

Magistrate has passed order dated 10.01.2018 which was challenged before the Sessions Court. After dismissal of the Revision Application by order dated 29.10.2018 this petition has been filed before this Court which is pending since 2019. Considering the facts, I do not find any infirmity in the impugned order. The complainant ought to have been diligent about seeking investigation.

7. Considering the factual aspects of this matter, no case for grant of relief prayed in this petition is made out.

ORDER

- (i) Criminal Writ Petition No. 3606 of 2019, is rejected and disposed of accordingly.

(PRAKASH D. NAIK, J.)