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

WRIT PETITION NO.3286 OF 2022

Raju Shivram Sagale ... Petitioner
V/s.
The State of Maharashtra & Anr. ... Respondents

Ms. Neeta Gaikwad for the petitioner.

Mr. R.M. Pethe, APP for the respondent no.1/State.

Mr. S.M. Sabrad for respondent nos.2 to 5.

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CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 28, 2022

PC.:

1. The petitioner is a witness in a prosecution lodged by the father of the petitioner under sections 406, 420, 465, 467, 468 read with 34 of the Indian Penal Code, 1860. The gist of prosecution lodged by the father of the petitioner is that the accused no.1 in whose favour the informant had executed a Power of Attorney had sold properties bearing Survey Nos.354/1 and 354/4/1 in favour of other accused. It is also the case of the informant that the accused no.1 and accused no.5 obtained signatures of the informant on blank stamp paper and by using those documents executed sale deed in favour of accused nos.1 to 4. Therefore, according to the informant, accused nos.1 to 5 have

prepared forged document on the basis of canceled power of attorney without the consent of the informant.

2. It is pertinent to note that the First Information Report was registered on 27th November 1994. The charge-sheet was filed on 31st March 1995. The complaint is pending before the criminal Court since 1995. In this background, the learned Magistrate had granted sufficient time to the prosecution to produce material against the accused. Various applications were filed on behalf of the prosecution seeking various reliefs. Finally, on 20th February 2020 prosecution filed an application below Exhibit 360 to recall the order of closure of evidence and on 22nd July 2021 filed an application under section 91 of the Criminal Procedure Code for production of papers in Civil Miscellaneous Application No.34 of 2009 and Special Civil Suit No.142 of 1994.

3. By the impugned orders, the learned Magistrate rejected both the applications and passed an order of closure of prosecution's evidence and placed the matter for final arguments.

4. The petitioner, claiming himself to be a victim, has filed the present petition challenging both the orders. Learned advocate for respondent nos.2 to 5 submitted that the witness has no locus to challenge the impugned order. He submitted that on the contrary in a suit filed by the informant, present witness was made defendant as the petitioner is beneficiary of the transaction with the accused. He invited my attention to the plaint in Special Civil Suit No.142 of 1994 which was the suit filed by the informant against the present accused and the petitioner. I find substance in

the submission of the petitioner, but since the petitioner is the son of the informant, the petitioner is entitled to claim undivided share in relation to survey no.354/1.

5. In so far as order passed below Exhibit 360 is concerned, the application has been filed seeking production of Civil Miscellaneous Application No. 34 of 2009 which was an application alleging willful disobedience of the order of injunction passed by the Civil Court against the accused persons. The next document is the copy of plaint in Special Civil Suit No.142 of 1994 filed by the informant challenging the validity of sale deed executed in favour of accused nos.1 to 4. The learned Magistrate, while rejecting the application, recorded a finding that the documents sought to be produced on record are not relevant for deciding the controversy involved. It is sated that if the party wants to refer said documents, it is open for him to obtain certified copies of those documents and produce it before the Court and, therefore, rejected the application.

6. Having considered the gist of the case of the prosecution, in my opinion, the learned Magistrate was justified in rejecting the application for production of documents as the documents sought are not necessary or desirable for the purpose of trial. The controversy before the learned Magistrate is whether the accused no.1 by executing sale deed, allegedly without authority, in favour of accused nos.1 to 5 have committed offence as alleged. As per prosecution, accused no.1 is seller without authority. Accused nos.2 to 5 are purchasers from accused no.1. Essential ingredients of offence of section 420 and section 464 having been laid down

by the Apex Court in the case of **Mohd. Ibrahim v. State of Bihar** reported in (2009) 8 SCC 751. The Apex Court in paragraphs 19 and 20 of the said judgment held as under:

“19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.”

Therefore, to adjudicate the ingredients of offences alleged, in my opinion, the copy of plaint challenging the validity of the sale deed and the application alleging breach of order of the Court are not necessary or desirable.

7. In so far as the order dated 14th August 2021 passed below Exhibit 1 is concerned, it is true that the conduct of the petitioner does not entitle him for any relief in the extraordinary jurisdiction of this Court. The learned Magistrate has given detailed reasons as to how on earlier occasion by order dated 20th February 2020 the evidence was closed and prosecution was given chance to lead evidence thereafter but the prosecution failed to adduce evidence. The learned Magistrate has recorded the conduct of the petitioner

in paragraph 6 of the order and also observed that he called upon the petitioner to adduce his evidence by entering into the witness box immediately but the petitioner refused to adduce evidence on the ground that he wanted the proceedings to be transferred to other Court. Such conduct on the part of the petitioner cannot be countenanced.

8. However, in the interest of justice, one last opportunity needs to be given to the petitioner to lead his evidence.

9. In so far as the request for transfer of proceedings from the Court of Judicial Magistrate First Class, Manmad to the Court at Malegaon is concerned, the averments made in the petition are not sufficient to transfer the case to the Malegaon Court. Adverse orders passed by the Court is no ground to transfer the case to another Court. Reasonable likelihood of bias or even real danger of bias is not borne out of the facts of the said case. The averments in the petition are not sufficient to raise the ground of bias against the learned Magistrate. Hence, following order:

- a) The order dated 14th August 2021 passed below Exhibit 360 is confirmed;
- b) The prosecution is permitted to examine the petitioner on 9th December 2022. The prosecution shall complete the evidence of the petitioner on 9th December 2022 itself. If the learned Magistrate finds that there is no sufficient time for cross-examination of the petitioner, he may adjourn the proceedings for cross-examination of the petitioner on any other convenient date within one (1) week from 9th

December 2022;

c) After completion of evidence of the petitioner, or in case the petitioner fails to remain present on 9th December 2022, the learned Magistrate shall fix convenient date for final arguments of the parties and after hearing is complete, the learned Magistrate shall endeavour to decide the complaint within one (1) month from the date of completion of final arguments;

d) Considering the reasons stated above, the petitioner is not entitled for any other reliefs in the petition.

10. The writ petition is disposed of in above terms. No costs.

(AMIT BORKAR, J.)