

AGK

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

WRIT PETITION NO.2744 OF 2022

Deepak Inder Ahuja

... Petitioner

V/s.

The State of Maharashtra

... Respondent

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GANESH
KULKARNI
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Date: 2023.04.28
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Mr S.N. Raj i/by Raj & Associates for the petitioner.

Mr. Arfan Sait, APP for respondent no.1/State.

Ms. Anita Castellino with Mr. Mehul Thakkar, Mr. Kevin Gala and Ms. Jayshri Rajemahadik for respondent no.2 to 5.

Mr. Kiran Jadhav, PSI with Mr. Vinod Wasave (Pairavi), API, Worli Police Station, are present.

CORAM : AMIT BORKAR, J.

DATED : APRIL 27, 2023

RC.:

1. The challenge in this writ petition is to the order dated 23 March 2022 passed by the learned Metropolitan Magistrate, 62nd Court, Dadar, Mumbai dismissing complaint of the petitioner holding it to be barred under Section 195(1)(b)(ii) of the Criminal Procedure Code, 1973.

2. Learned advocate for the petitioner invited my attention to paragraph 13 of the complaint, which reads thus:

“13. The said documents are forged and thereafter, produced before Dy. Charity Commissioner Office, Mumbai. Hence, your police station can register an FIR against the Accused persons mentioned herein above.”

3. On perusal of the said paragraph, it appears prima facie that the document has been alleged to be forged before it was produced to the Joint Charity Commissioner's Office. Whether it was forged or not and if it was forged during the proceeding or before the proceeding, conclusive finding can be recorded at the time of trial; however, at this stage the learned Magistrate dismissed the complaint holding that the complaint is barred under Section 195(1)(b)(ii) of the Criminal Procedure Code, 1973.

4. Law on this point is well settled by the Constitution Bench decision of the Apex Court in **Iqbal Singh Marwah and Anr. vs. Meenakshi Marwah and Anr.** reported in 2005 (4) SCC 370 wherein the Apex Court has held that where forgery of a document is committed prior to that document being produced or given in evidence in a proceeding in any Court, the provisions of Section 195(1)(b)(ii) are not attracted.

5. On this limited point, the writ petition succeeds. Hence, following order.

a) The impugned order dated 23 March 2022 passed by the learned Metropolitan Magistrate, 62nd Court, Dadar, Mumbai in C.C. No.26/SW/2022 is quashed and set aside;

b) Proceedings are remitted back to the learned Magistrate for decision afresh on merits in accordance with law.

6. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)