

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

CRIMINAL WRIT PETITION NO.2598 OF 2021

**WITH
INTERIM APPLICATION NO.4231 OF 2022
IN
CRIMINAL WRIT PETITION NO.2598 OF 2021**

Meena Punekar & Anr. Petitioners/
Applicants
versus

The State of Maharashtra & Anr. Respondents

**WITH
INTERIM APPLICATION NO.3760 OF 2024
IN
CRIMINAL WRIT PETITION NO.2598 OF 2021**

Chetan Punekar Applicant

IN THE MATTER BETWEEN :

Meena Punekar & Anr. Petitioners
versus
The State of Maharashtra & Anr. Respondents

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- Mr. Harshad Nimbalkar, Senior Advocate a/w Omkar Nevgi a/w Satyam H. Nimbalkar i/b. Vivek Patil & Associates, Advocate for Petitioners.
- Mr. Tejas Dande i/b. Tejas Dande & Associates, Advocate for Respondent No.2.
- Smt. Mahalaxmi Ganapathy, APP for the State/Respondent.

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**CORAM : SARANG V. KOTWAL &
DR. NEELA GOKHALE, JJ.
DATE : 11th OCTOBER, 2024**

P.C. :

1. The present Petition is filed for quashing of the C.R.No.1279/2020 registered at Khadak Police Station u/s 420, 467, 468, 471 r/w 34 of the Indian Penal Code and also for quashing of other proceedings arising out of the FIR. The investigation is over and the charge-sheet is filed.
2. Heard Mr. Harshad Nimbalkar, learned Senior Counsel for the Petitioners, Mr. Tejas Dande, learned counsel for the Respondent No.2 and Smt. Mahalaxmi Ganapathy, learned APP for the State.
3. The FIR is lodged by one Avinash Kangude. He has stated in his FIR that in December 2019, he purchased a property at Survey No.19/1-8B, admeasuring around 16,000 sq.ft. For that purpose, the power of attorney dated 30/11/2019 was registered mentioning that the relevant powers are given to the first informant/Respondent No.2 herein. On inspection of the documents he came to know that in the year 1984 Balwant Datar had given the said property to one Rajaram Puneekar on

lease for 99 years for Rs.1,100/- per year. Since the year 2000, Rajaram Puneekar did not pay any lease amount and had also encroached on 7,000 sq.ft. next to that property. He made constructions on that encroached property. Balwant Datar sent a notice dated 25/02/2019 through his lawyer to the said Puneekar for cancellation of that lease deed. The said Puneekar gave some false reply to that notice. The FIR thereafter mentions that the Respondent No.2 came to know that on 23/04/2008 a declaration deed was executed and registered with the Sub-Registrar, Guruvarpeth, Pune. It was mentioned in that declaration deed that Balwant had passed away. The document was executed ex-parte. For that purpose, a certificate based on false information was obtained. In fact, Balwant is still alive. The declaration deed was false. The allegations against both the Petitioners are that they had signed that document as witnesses and had helped the declarant Rajaram Puneekar in executing that document. On these allegations, the FIR is lodged.

4. The investigation was carried out and the statements of various witnesses were recorded. The documents in question

were seized. After the entire investigation, the main and the only allegation against the Petitioners remains that they had attested that particular declaration deed.

5. Learned counsel for the Petitioners submitted that the Petitioner No.1 is the widowed daughter-in-law of Rajaram and the Petitioner No.2 is her son. He submitted that in the year 2008, the Petitioner No.1 had already lost her husband. She was dependent on Rajaram. The Petitioner No.2 Chetan was a college going student. He was also dependent on Rajaram. He submitted that in the entire charge-sheet, there is nothing to show that they knowingly helped Rajaram in executing that document. He submitted that, in good faith, on the instructions of Rajaram, who was the grandfather of the Petitioner No.2, they had signed that document attesting to the fact of the execution of that document. He submitted that the fact that the document was executed, is undisputed. Therefore, merely signing that document as attesting witnesses does not show that they in collusion with Rajaram had committed this offence. He submitted that at present the Petitioner No.2 is working in USA

and because of this prosecution, he is facing difficulties in his future life. The Petitioner No.1 is also not earning anything on her own. He relied on a judgment of the Hon'ble Supreme Court in the case of *M. Shrikanth Vs. State of Telangana and Another*, as reported in *(2019) 10 Supreme Court Cases 373*. He relied on the observations and finding in that judgment to the effect that the attesting witnesses were held not liable for prosecution. He submitted that the observations of the Hon'ble Supreme Court in that judgment are squarely applicable to the facts of this case. He further invited my attention to the correction deed dated 05/10/2020 executed by Rajaram in which it was clarified that the statement in the declaration deed dated 23/04/2008 about the death of Balawant Datar was incorrect and it was made inadvertently. The correction deed highlighted the circumstances under which the deed was executed.

6. Learned counsel for the Respondent No.2 as well as learned APP submitted that, the fact, that Balwant was alive on the date of execution of document dated 23/04/2008, is important and is a false statement. The Petitioners are not some

strangers who had attested the said document, but they were the family members of Rajaram and therefore, they were aware of the false statement made in that declaration deed. According to learned counsel for the Respondent No.2 the said declaration deed could not have been executed and registered without the participation of the Petitioners.

7. We have considered these submissions. We have also perused the judgment referred by the learned Senior Counsel for the Petitioners. Arguable questions are raised. The matter requires consideration.

8. Hence, the following order :

ORDER

(i) Rule.

(ii) Till the decision of this Writ Petition, the further proceedings before the Trial Court arising out the C.R.No.1279/2020 registered at Khadak Police Station, Pune City, shall be stayed, only qua the present Petitioners.

- (iii) Learned counsel Mr. Tejas Dande, for Respondent No.2 waives service for final disposal of the Writ Petition.
- (iv) Learned Senior Counsel for the Petitioner does not press the companion Interim Application No.3760 of 2024. He seeks liberty to take appropriate steps before the appropriate Magistrate for relief claimed in the Interim Application No.3760 of 2024. If such steps are taken by preferring appropriate application before the Magistrate, it shall be decided expeditiously.
- (v) Consequently, both these companion Interim Applications are disposed of as the Interim Application No.4231 of 2022 does not survive because the charge-sheet is already annexed to the Petition.

(DR. NEELA GOKHALE, J.)

(SARANG V. KOTWAL, J.)