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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.78 OF 2025

SITARAM ALIAS SANDEEP
DATTARAM KALOKHE

... Petitioner.

Versus

STATE OF GOA, THROUGH
PUBLIC PROSECUTOR AND ANR.

... Respondents.

Ms. Apeksha Kalokhe, Advocate for the Petitioner.

Mr. S.G. Bhobe, Public Prosecutor for Respondent No.1.

Mr. Ryan Menezes with Ms. Stephanie Alvares, Advocates for
Respondent No.2.

CORAM: VALMIKI MENEZES, J.

DATED: 13th October, 2025

P.C:

1. Registry to waive office objections and register the matter.
2. This petition has been filed by the Complainant in Criminal Case No. 348/IPC/2015/F pending before the J.M.F.C. at Panaji, who is presently trying the charge-sheet under Crime No. 69/2012. On the complaint filed by the Petitioner, the aforesaid FIR was registered and on investigation, charge-sheet came to be filed before the Magistrate alleging that Respondent No.3 had committed acts of forgery by fabricating a power of attorney purporting to be that of the

Complainant and executing a Sale Deed dated 22.06.2011, as if the same were executed by the Complainant; the Complainant is the co-owner of the property which is subject matter of the sale.

3. During the course of the trial, it appears that the alleged original forged Sale Deed, which was attached by the I.O. during investigation, was placed on the Court file by the Public Prosecutor then appearing in the matter, but the said document went missing from the Court file. Pursuant to order of this Court dated 28.03.2023 in Criminal Writ Petition No. 118/2023 (F), the Principal District and Sessions Court was directed to hold an inquiry as to the circumstances under which the document went missing, on which a report dated 30.06.2023 came to be filed by the Sessions Court leading the inquiry inconclusive as to the circumstances under which the document went missing.

4. Be that as it may, the State moved an application for leading secondary evidence by producing the copies of the document which were allegedly forged, which came to be allowed and such secondary evidence was led through the Complainant. The Complainant has also been examined and the entire Prosecution evidence has been completed and the matter was pending before the Magistrate for recording of the Statement of the Accused under Section 313 Cr.P.C. Prior to this, the State moved an application at Exhibit D-143 seeking to examine additional witnesses, who were not arraigned on the

charge-sheet. The four witnesses, sought to be examined purported to be persons who were co-owners of the very same property and in whose names the powers of attorney were also executed, after which the forged Sale Deed was executed. It is the case of the State that the co-owners Sadashiv Gaitonde and Jaya Gaitonde were sought to be examined, excluded this forged Power of Attorney before the Notary S.D. Pawaskar and Notary K.H. Bhosale.

5. The relevance of seeking examination of these witnesses is not clearly known, in relation to the offence of which the Accused are charged; it appears from the impugned order that the State was seeking to examine these witnesses to prove that even the other co-owners in whose names the Sale Deed was executed, were not actually parties to the document, and even qua those co-owners, the document was forged. This stand is not even alleged in the charge-sheet, nor are these witnesses arraigned in the charge-sheet, for obvious reasons. The application came to be dismissed by the impugned order, which was challenged by the State in a revision application in Criminal Revision Application No.18/2024 before the Sessions Court which has dismissed the application, pending finality to those proceedings. The State has chosen not to challenge the impugned order any further. The District Court, in its order dated 28.08.2024 has held that since the order is an interlocutory order, it has no power to examine the same and has consequently rejected the revision application. In the latter part of the order, the Sessions Court

seems to be of the opinion that the witnesses were relevant, which comment was uncalled for since the revision application was dismissed at a preliminary point that the same was in challenge to an interlocutory order and, therefore, not maintainable.

6. The present petition has been filed by the Complainant challenging the original order passed by the Magistrate dismissing Exhibit D-135.

7. At the outset, it is doubtful whether the Complainant would have any locus standi to challenge such an order, when the application filed was that of the State, and the same has attained finality for want of further challenge after the revision application was dismissed by the Sessions Court. Nevertheless, looking into the application itself, there is no case made out in the application, as recorded by the Trial Court as to the relevance for recording the evidence of the four witnesses sought to be recorded after trial had reached practically its end. Going by the charges recorded by the Trial Court, whether the offence alleged is under Sections 465, 467, 468, 471 r/w 120-B, in what manner would those witnesses throw any additional light on the offence alleged, merely because two of those witnesses were co-owners of the property, and had themselves chosen not to file any complaint. It is also relevant to note that during the course of the investigation, none of the statements of these witnesses were taken, nor are their names arraigned in the charge-sheet in the list of

witnesses. Clearly, therefore, once trial had commenced and had reached a stage just prior to the examination of the Investigating Officer, whether such an application could not have been filed to examine these witnesses. It is doubtful that even at the behest of an application through the I.O. to do further investigation and take statements of these witnesses, at that stage, whether such an application could at all be allowed. The impugned order has been correctly passed and does not call for interference.

8. By order of 03.02.2025, this Court has already observed that prayer clause (b) of the petition cannot be granted since it seeks a mandamus as a follow-up action directed under order of 28.03.2023, and this would essentially lie before the Division Bench. In fact, an observation is further made in that order, Petitioner may move an appropriate application before the Division bench to press for prayer clause (b). As far as prayer clause (c) of the petition is concerned, in the same order, this Court had rejected prayer clause (c) on the basis of the Judgment of *Vinubhai Haribai Malaviya v. State of Gujrat*, [(2019) 17 SCC 1] referred to in that order, which came to be rejected on the very same day. So also prayer clause (e) was not pressed for on that day and as far as prayer clause (d) is concerned, which concerns the challenge to the impugned order dated 06.12.2023, the same stands rejected by this order.

9. It is further clarified that if any relief is sought before the

Magistrate for directions to implement report dated 30.06.2023 of the District Court, the same shall not lie before the Magistrate, as that is clearly a report prepared by the District Court on the Administrative side, on which the District Court would either have to act on or take further action, as it deems fit. The Magistrate dealing with the present matter, need not be detained by considering the report dated 30.06.2023 of the District Court or passing any further directions therein. This direction would equally apply to an application dated 04.03.2025 at Exhibit 176 of the file of the J.M.F.C., on which no orders are necessary as the relief sought therein does not concern the Magistrate in the case before it.

10. Learned Advocate for the Petitioner cites a Judgment in ***Bharati Tamang v. Union of India & Ors., Writ Petition (Crl.) No. 159 of 2012***, before me, to contend that the Supreme Court has issued directions in that Judgment to all Courts and Prosecutors, to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

The Judgment arises from a petition which sought quashing of a charge-sheet, and a direction to appoint an independent Special Investigation Team to conduct investigation de novo. It is in that context, after concluding that the entire investigation had been badly conducted, that the directions have been issued. The Judgment would obviously not apply to the facts of the present case, where evidence

of the Prosecution has concluded and all that is left now is to record the Statement of the Accused under Section 313 and proceed, if the Accused do not wish to lead evidence, to the stage of final arguments of the case. The petition is, therefore, dismissed.

11. On perusal of the Roznama dated 30.09.2025, it appears that the State, through the Public Prosecutor, has filed an application at Exhibit D-183 seeking addition of charges. It is trite law that the Criminal Courts can, at any stage, vary a charge that has been framed based upon the evidence on record. The Magistrate shall not be detained by the pendency of this application, and on the next date i.e. on 14.10.2025 or any date thereafter, the Public Prosecutor shall clearly state to the Court whether it is pressing for that application, and the Court shall proceed to pass orders thereon, including to decide whether such an application is at all maintainable. It is also noted that there have been several applications filed during the course of the trial, by the State through the Public Prosecutor, which, perhaps were at the behest of the Complainant. Many of these were neither maintainable nor would lead the trial in any particular direction. The Prosecution, in this case, would be well advised to stand its ground, and not be influenced or swayed by the dictats of the Complainant, who may otherwise have his own agenda. The Public Prosecutor may act independent of the Complainant and present the case for the State and take the prosecution of the case to its logical end.

12. The Magistrate is requested to complete the recording of the Statement of the Accused under Section 313 expeditiously, and if no evidence is to be led by the Accused, to proceed with the final hearing of the case and pass Judgment, preferably by 15.01.2026.

VALMIKI MENEZES, J.