

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

CRIMINAL WRIT PETITION NO. 4256 OF 2025

Ganpat Gopal Bhoir

Age :- 67 years, Occ. Agriculturist and
Business,

Residing at Bhisegaon, Post Gundage,
Taluka Karjat, District Raigad

...Petitioner

Vs.

1. State Of Maharashtra

Through Karjat Police Station,
Taluka Karjat, District Raigad.

2. Shahjad Vallimahamad Marchant

Age – 45 years

Occ. Business

Residing at Plot No. 181, D'silva House

Zubi Villa, Hill Road,

Near Bandra Railway Station, Bandra,

Mumbai – 400 050.

...Respondents

Adv. Sachin Chavan a/w Adv. Nachiket Shriram Kulkarni	Advocate for the Petitioner
Ms. Gauri S. Rao	APP for the Respondent-State
S. G. Dhupkar	PSI, EOW, Raigad

CORAM : S. M. MODAK, J.

DATE : 08th AUGUST 2025

P.C. :-

1. Heard learned Advocate for the Petitioner, he is Complainant in private case filed before the Court of JMFC and also heard learned APP. The Respondent No. 2 is accused no. 1.

2. As per that private complaint, there is F.I.R. registered with Karjat Police Station on 03.02.2011. During investigation, they have seized the possession receipt. Its copy is filed on page no. 30. It is dated 13.04.2005. There are two parties, they are as follows:--

- (i) The present Petitioner is the party, who has executed the possession receipt.
- (ii) One Narayan Bhojwani, who is one of the accused. He is a person in whose favour the possession receipt got executed.

3. After investigation, the Police have submitted the report of C-summary to the trial Magistrate and it is pending for consideration. The present Complainant has filed protest petition and the learned Magistrate has issued notice to the accused as per the order dated 13.06.2025. This is one of the order that is challenged in this petition. The contention is the accused cannot be heard in protest petition. The reliance is placed on observation in case of **Samir Ahluwalia Vs. State**

and Anr.¹ (para no. 6). I have gone through that observations. There is no need to hear the proposed accused. These observations is not applicable to the facts of this case because already there is F.I.R., the accused are named. **In such a situation the accused needs to be heard in the protest petition.** The submission to that effect is rejected.

4. On an application of one of the accused Shahjad Wallimohammad Marchant, the trial Magistrate has directed to Police to handover the possession receipt to the said Shahjad as per order dated 02.07.2025. The order is on page no. 101.

5. The learned Magistrate except reiterating the factual aspect has not given any convincing reason. The learned Magistrate only observed the possession receipt is seized while drawing panchnama. On the basis of the instructions, it is submitted that possession receipt is already handed over to the said accused. In fact the learned Magistrate ought to have kept that possession receipt in the record of the case till the time C-summary report is decided, because this is one of piece of the evidence. The learned Magistrate may accept C-summary or may not accept it, but when the C-summary report will be

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argued, the possession receipt will not be available before the trial Court.

6. The allegations in the F.I.R. is “*certain pages of the possession receipt were replaced in order to suit the case put up by the accused. It pertains to certain terms of handing over possession and certain payment*”. In fact while hearing the C-summary report, the Court need to have that possession receipt before him. Now the Court will lose the opportunity of going through the possession receipt.

7. In view of that while hearing the C-summary report, the Court can certainly give direction to the accused to produce that possession receipt. Otherwise, also this receipt was handed over on executing the bond by way of interim custody. So if it is so, certainly the Court can exhaust that power to give necessary direction. The orders which were challenged were not set aside. Hence, there will not be prejudice to Respondents and that is why notice is not issued to the respondents.

8. With these observations, the petition is disposed of.

[S. M. MODAK, J.]