
(2013) 03 BOM CK 0190

In the Bombay High Court

Case No : Criminal Application (Apl) No. 215 of 2012

Dr. Suresh and Others

APPELLANT

Vs

Wing Commander Ramesh

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 91
Income Tax Act, 1961 — Section 40(na), 45(3), 80I(6)(i), 80I(a)(5), 80P
Penal Code, 1860 (IPC) — Section 120B, 420, 465, 467

Citation : (2013) ALLMR(Cri) 2176

Hon'ble Judges : M.L. Tahaliyani, J

Bench : Single Bench

Advocate : V.D. Awchat, for the Appellant; Ketki A. Jaltare, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Tahaliyani, J.—Heard Mr. Awchat, learned counsel for the applicant and Mrs. Ketki Jaltare, learned counsel for the non-applicant. Admitted. Heard finally by consent of learned counsel for the parties.

2. The applicants are facing trial before the Judicial Magistrate First Class at Ramtek for the offences punishable under Sections 120B, 420, 465 and 467 of Indian Penal Code along with other connected offences at the instance of the respondent. It is a private complaint case.

3. The respondent had made an application for issuance of summons to the office of Revenue Commissioner for production of the original alleged forged document which is in the custody of the Additional Revenue Commissioner, Nagpur. The said prayer was opposed by the applicants. The learned trial Court granted the prayer and directed issuance of summons for production of document from the office of Revenue Commissioner.

4. The applicants/original accused have challenged the said order in the present application. It is submitted by Mr. Awchat that the respondent has filed a civil

suit pertaining to some property described in the alleged forged document. It is further submitted by Mr. Awchat that the Civil Court is competent to decide the genuineness or otherwise of the document in question. It is contended that it was not necessary for the Criminal Court to call the document.

5. In this regard, it may be stated here that though the civil suit is pending in respect of same property, that does not prevent the trial Court to call the document pertaining to same property from the person in whose custody it is. Ultimately, production of original document is necessary to determine the charge of forgery. The Civil Court cannot punish the culprits for offence of forgery even if it comes to the conclusion that the document relied upon is forged. I do not find any substance in the arguments of Mr. Awchat, learned counsel for the applicant. The learned counsel, Mrs. Jaltare, has submitted that the case is fixed for recording of evidence of hand writing expert on 6.3.2013. It is submitted that the document examiner has already given his opinion in respect of writing in the said document. I am told that the document examiner has not examined the original document but he has examined the photo copy of the original. Probative value of evidence of the document examiner in respect of the opinion given by him on the basis of examination of photo copy of the document is a matter of consideration for the trial court. The issue involved in the present application is only in respect of the power of the trial Court u/s 91 of Code of Criminal Procedure directing production of the document which is necessary for the purposes of trial of the case pending before it. Needless to say that considering the nature of the charges, production of original document was found necessary and the learned Magistrate has rightly issued the summons for production of the said document. No interference is called for. Criminal application stands dismissed.