
(2014) 09 BOM CK 0216

In the Bombay High Court

Case No : Writ Petition No. 4509 of 2013

Natobar Satkori Choudhary

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Citation : (2015) ALLMR(Cri) 758 : (2015) 3 BomCR(Cri) 413

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : Chetan Akerkar, instructed by A.K. Saxena, Advocates for the Appellant; M.R. Tidke, APP, Advocates for the Respondent

Judgement

A.M. Thipsay, J.—Rule. By consent rule is made returnable forthwith. Respondents waive service. By consent heard finally. It is not disputed that the allegation against the respondent Nos. 2 and 3 is that they have committed forgery of a particular document i.e. an agreement dated 25th May 1987. The respondent Nos. 2 and 3 who are the original accused Nos. 1 and 2 respectively are alleged to have tampered with the original agreement and committed forgery.

2. Admittedly, the trial is in progress. Admittedly, the charge in respect of offences of forgery, using a forged document as genuine etc., has been framed against the respondent Nos. 2 and 3.

3. When such is the position, the petitioners" desire to have the original document that is, the allegedly forged agreement produced before the learned trial judge during the trial was proper and legal. As a matter of fact, considering the nature of allegations, the trial court itself ought to have felt the necessity of having the said document produced before it during the trial. Whether the document is indeed forged and whether the production thereof before the trial court would advance the case of the prosecution, would be an entirely different matter and this aspect shall be decided by trial court in accordance with law.

4. I find that the approach of the Magistrate in the matter; namely, of asking the

petitioner "to take steps" to have the document procured from the civil court and produce it before the Magistrate's court was not proper. Section 91 empowers a Magistrate to summon for certain documents/things in circumstances mentioned in the said section. The Magistrate, therefore, ought to have summoned the document in question by sending a communication in that regard to the court in whose custody the document is said to be lying.

5. The case is pending and recording of further evidence is going on.

6. The learned Additional Sessions Judge dismissed the revision application without understanding the real significance of the prayer of the petitioner, viz., the necessity of having the document in question produced before the trial court.

7. The impugned orders are not in accordance with law. The courts below have failed to exercise the jurisdiction vested in them by law. The petition is allowed. The impugned orders are set aside. The Magistrate, on an application made by the petitioners, shall cause the document in question to be produced before him by issuing summons/letter of request to appropriate authority. The petition is disposed of in the aforesaid terms. Rule is made absolute.