

CASE NO.:
Appeal (crl.) 330 of 2008

PETITIONER:
Kishor Kirtilal Mehta & Ors

RESPONDENT:
Vijay Kirtilal Mehta & ors

DATE OF JUDGMENT: 18/02/2008

BENCH:
ALTAMAS KABIR & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 330 OF 2008
@ S.L.P. (CRIMINAL) NO.357 of 2007

Altamas Kabir, J.

1. Leave granted.
2. By a Deed of Trust dated 5th July, 1978, one Kirtilal Manilal Mehta, the late father of Kishor Kirtilal Mehta, the appellant No.1 herein, created a Trust known as Lilavati Kirtilal Mehta Medical Trust and appointed Kishor Kirtilal Mehta, Mrs.Charu Kishor Mehta the appellant No.2 and Mrs. Rekha Haresh Sheth, the sister of the appellant No.1, as Permanent Trustees thereof. The said Trust established the Lilavati Hospital which is a highly-reputed hospital in Mumbai and is considered to be one of the best hospitals in India today.
3. Clause 17 of the Trust Deed stipulates that as far as possible only members of the Settlor's family are to be appointed as Trustees. However, the respondent No.1, Vijay Kirtilal Mehta, the elder brother of the appellant No.1 and son of the Settlor, was neither appointed as a Permanent Trustee nor as a Trustee by the Settlor when the Trust was created. According to the appellants, it was at the instance of the appellant No.1 that the respondent No.1 was appointed as a Trustee on 22nd July, 1990, for a period of five years, as provided under the Trust Deed. The case of the appellants is that since the Trust Deed further stipulates that except for Permanent Trustees all other Trustees could be appointed for a term of five years only and for a maximum of three terms, the respondent No.1 ceased to be a Trustee after the expiry of the third term on and from 22nd July, 2005.
4. According to the appellants, Mrs.Charu Kishor Mehta, the appellant No.2, thereafter issued a notice on 5th April, 2006, for holding a meeting of

the Trustees in order to fill up the vacancy caused by the cessation of the respondent No.1 as a Trustee of the aforesaid Trust. Mrs. Rekha Haresh Sheth did not attend the meeting held on 8th April, 2006, but addressed a letter to the appellant No.2 through her advocate enclosing a copy of the Minutes of a meeting of the Trust purported to have been held on 22nd July, 1995, wherein Mr. Vijay Kirtilal Mehta, the respondent No.1, was shown to have been re-appointed as a Permanent Trustee. The Minutes also indicated that the appellants, Kishore Kirtilal Mehta and Mrs. Charu Kishore Mehta, had signed the said Minutes. The appellants denied having signed the said Minutes and questioned the genuineness of the same and contended that the said Minutes had been fabricated in order to circumvent the Resolution adopted by the Permanent Trustees on 8th April, 2006, declaring the cessation of the trusteeship of the respondent No.1.

5. In any event, by his letter dated 8th April, 2006 the respondent No.1 asked the appellant No.2 not to hold any meeting on 8th April, 2006, pursuant to her notice dated 5th April, 2006. The appellants were also informed that Niket Mehta, son of the respondent No.1, had been appointed a Permanent Trustee and the respondent No.1 had been re-appointed as a Permanent Trustee.

6. From the materials on record it appears that in regard to the Minutes of the meeting of the Trustees allegedly held on 21st July, 1995, a Change Report was filed with the office of the Assistant Charity Commissioner, Mumbai, on 10th April, 2006, to record the cessation of trusteeship of Prashant Kishore Mehta and the re-appointment of Rajiv Kishore Mehta as Trustee of the above Trust.

7. Certain other facts subsequently surfaced from correspondence addressed by the Heads of the different departments of the Lilavati Hospital to the appellant No.2 which led to the filing of a complaint by the appellant No.1 before the Economic Offences Wing of the Bombay Police on 3rd May, 2006, against the Lilavati Hospital Trust and others for having allegedly committed offences punishable under Sections 120-B, 465, 467, 468, 471, 474 and 420 of the Indian Penal Code.

8. Since, according to the appellants, no action was taken by the Economic Offences Wing of the Bombay Police on the basis of the complaint dated 3.5.2006, the appellant No.1 filed a complaint before the Additional Chief Metropolitan Magistrate (4th Court), Girgaum, Mumbai, on 13.5.2006, being CC No.24/M/2006, against the respondent No.1 and others under Section 120-B, 465, 467, 468, 471 and 420 of the Indian Penal Code alleging that the accused persons had committed forgery and had fabricated various documents and records of the Trust, including the Resolution alleged to have been adopted by the Trustees on 22.7.1995. By an order dated

22.5.2006 the learned Magistrate directed the Gamdevi Police Station to investigate into the allegations contained in the complaint filed by the appellant No.1 under Section 156(3) of the Code of Criminal Procedure. The Gamdevi Police Station registered First Information Report MECR No.5/2006 on 27.5.2006 on the basis of the said complaint.

9. The above complaint was followed by an application filed by the appellant No.1 on 18.5.2006 under Section 94 of the Code for issuance of a Search Warrant for search and seizure of the Minutes of the alleged meetings of the Board of Trustees as well as the letter dated 21.7.1996 which was alleged to have been forged.

10. Soon thereafter, the appellant No.1 filed Suit No.2444 of 2006 before the City Civil Court at Bombay on 30th May, 2006, praying for a declaration that the Minutes of the meeting alleged to have been held on 22.7.1995 and the Resolution adopted therein, were forged and fabricated. Admittedly, the said suit is still pending disposal.

11. At the time of arguments in respect of the application for interim reliefs prayed for by the appellant No.1 in the said suit, the counsel for the Trust tendered a copy of the Minutes Book of the Trust containing the Minutes of the meetings of the Trust alleged to have been held between 31st January 1993 and 31st March, 1997. According to the appellants herein, that was the first time that they had come across the said Minutes Book. It is the case of the appellants that on examination of the Minutes Book, which was produced on behalf of the Trust, they found that the entire Minutes Book contained forgeries and fabrication. A detailed affidavit was filed by the appellant No.1 in that regard. It may be mentioned at this stage that the prayer made by the appellant No.1 for issuance of a search warrant was refused by the Magistrate by his order dated 15.6.2006, inasmuch as, the investigation under Section 156(3) of the Code was also in progress.

12. On 19.6.2006 Smt. Rekha Sheth filed an affidavit in Suit No.2444 of 2006 pending before the City Civil Court, Bombay, inter alia, disclosing that she was in possession of the three original letters dated 21.7.1994. Thereafter, in connection with the investigation under Section 156(3) of the Code the Gamdevi Police Station issued a notice dated 24.7.2006 to the appellant No.1 directing him to produce the following documents:

- i) Minutes Book of the meetings of the Board of Trustees for the period 31.1.1993 till date,
- ii) Resolution passed on 22.7.1995 (3 originals); and
- iii) Letter dated 21.7.1995 signed by the appellants herein and Rekha Sheth (3

originals).

13. Subsequent to the said notice, the respondent No.1, Vijay Kirtilal Mehta filed Criminal Writ Petition No.1581 of 2006 before the High Court of Bombay against the order dated 2.5.2006 passed by the Additional Chief Metropolitan Magistrate and also against order dated 24.7.2006 and prayed for quashing of the said two orders as also the FIR dated 27.5.2006.

14. The writ petition was listed before the High Court of Bombay on 27.5.2006 and after hearing the counsel for the parties the High Court passed an order directing the respondent No.1 and the Lilavati Hospital Trust to permit the police authorities to inspect the documents, impugned by the appellants, at the premises of the Lilavati Hospital and to furnish copies thereof to the said authorities. Interestingly, the appellants herein who were vitally interested in the subject-matter of the proceedings, were not made parties in the Criminal Writ Petition No.1581 of 2006 and accordingly the appellants moved an application for intervention on 4.8.2006. Inasmuch as, the respondent No.1 sent certain selected documents only directly to the Police Station, the appellants herein moved an interlocutory application No.310 of 2006 in the pending criminal writ petition. The same was listed for hearing on 23.8.2006 and by consent of the counsel appearing for the parties the High Court appointed the Chief Examiner of Documents, Government of Maharashtra, as Court Commissioner to examine the following documents:

- i) Minutes Book of the meeting of the Trust in respect of the alleged meetings of the Board of Trustees of the said Trust between 31.1.1993 to 31.3.1997 running into 150 pages;
- ii) 3 Original letters dated 21.7.1995; and
- iii) 3 Original extracts of the Resolution dated 22.7.1995.

15. Subsequent to the passing of the said order dated 23.8.2006 the Public Prosecutor moved the High Court for substitution of the Chief Examiner with the Additional Chief Examiner and also sought relief to permit the Commissioner to take the documents in question to their laboratory for chemical examination. By its order dated 8.9.2006 the High Court while confirming its order of 23.8.2006 directed the respondent No.1 to hand over the original documents as contained in paragraph 4 of the said order of 23.8.2006 to the Prothonotary and the Senior Master of the High Court who would then take the said documents into custody and seal and dispatch the same by special messenger to the Chief Examiner of Documents, M.S. at Pune, who was appointed as the Commissioner by the Court. The Chief Examiner of Documents was directed not to part with the documents in any manner and to keep the same in safe custody and after conducting

required scientific tests on the documents return the same in a sealed cover by special messenger to the Prothonotary and the Senior Master of the Court and to send his opinion within six weeks from the date of receipt of the documents. On the documents being received back from the Chief Examiner of Documents, the appellant would be entitled to collect the same in the presence of the respondents, their advocates, the learned Public Prosecutor and the Investigating Officer.

15. Thereafter, on 10.11.2006 the matter was once again listed before a Division Bench of the High Court comprised of the Hon'ble Mr. Justice S.B. Mhase and the Hon'ble Mr. Justice S.R.Sathe, when the letter dated 7.11.2006 from the Chief Examiner of Documents was brought to the notice of the Court. Since the said letter is the genesis of the present proceedings before us the same is reproduced hereinbelow :

"No. HE/1319/HW/PCP/34/06/VVR/06
Office of the Chief State Examiner of
Documents, C.I.D. M.S., Pune
Date : 07 November, 2006

To
The Registrar,
Original Side,
Prothonotary and Senior Master,
High Court, Original Side
Mumbai

Ref. : Your letter No.B/
16143 dated 6.11.2006

Sub. : Misc.Application No.
440/06 in Criminal
Writ Petition 581 of
2006.

Sir,

The additional documents in this case have been received in this Office today i.e. on 7.11.2006. As per the previous order dated 23 August 2006 the signature (Resolution dated 22 July 95) in the Blue Register was disputed. However, the register does not contain signatures of Sow. C.K. Mehta. In the present order, 6 documents which were sent previously are stated to be admitted. It is, therefore, requested to kindly communicate as to which signatures of Shri K.K. Mehta and Sow. C.K. Mehta are disputed and which signatures are admitted specifically so as to enable this office for the needful.

The Hon'ble Lordship may kindly be requested to grant a further

period of about 4 week's time for examination after receipt of complete clarification.

Inconvenience caused to the Hon'ble Lordship is deeply regretted.

Yours faithfully,

Sd/-
Chief State Examiner of Documents
C.I.D. M.S. Pune

On the said letter being brought to the notice of the Court the matter was adjourned till 14.11.2006, when, after hearing learned counsel for the parties, the Division Bench was of the view that since the order of 23.8.2006 had been passed with the consent of the parties and was subsequently reaffirmed by order dated 8.11.2006 and 2.11.2006, it would be appropriate to place the matter before the original Bench consisting of the Hon'ble Justice J.N. Patel and the Hon'ble Justice Roshan Dalvi for clarification of their Lordships' order dated 23.8.2006.

16. Thereafter, the matter was taken up by the latter Bench on 10.1.2007 on the basis of the letter written by the Chief Examiner of Documents on 7.11.2006, and, by its order of even date, the Hon'ble Judges passed the order which has been impugned in the present appeal and reads as follows:

"CRIMINAL APPLICATION NO. 310 OF 2006
IN
CRIMINAL WRIT PETITION NO.1581 OF 2006

Kishor Kirtilal Mehta ...Applicant

Vs.

Vijay Kirtilal Mehta & ors. ..Respondents

Mr. M.S. Mohite for the applicant
Mr. S.R.Borulkar, P.P. for the State

CORAM : J.N. PATEL &
ROSHAN DALVI, JJ

DATE : 10TH January, 2007

P.C.

1. The matter has been placed before our Bench to clarify our order dated 23.8.2006 which was modified by passing further order on 8.9.2006. The question for seeking clarification arose because a communication dated 7.11.2006 was received by the Registrar of this Court from the Commissioner appointed by this Court i.e. the Chief State Examiner of Documents,

C.I.D., M.S. Pune and in which a specific query has been made that in respect of six documents which were sent previously to the Commissioner and stated to be admitted. The Commissioner wanted to know as to which signatures of Shri K.K. Mehta and Sow C.K. Mehta are disputed and which signatures are admitted specifically so as to enable his office to do the needful. Though such a clarification is not required as our order dated 23.8.2006 is very specific with reference to the documents which are required to be examined by the Commissioner, but what we find is that one of the intervenor-complainant has stated that they dispute all the signatures of Shri K.K. Mehta in the minute book and of Sow C.K. Mehta in three letters and the three resolutions and for that reason the Commissioner need not, for the present, examine all the signatures on the minutes book except relating to the resolution dated 22.07.1995 which is the basis of the complaint lodged with Gamdevi Police Station and the three copies of the resolutions and three letters as observed in our order and submit his report as early as possible.

2. Needless to say that the Commissioner would require specimen signatures of the parties for the purpose of comparison which have already been forwarded by order dated 2.11.2006.

Sd/-(J.N. Patel,J.)

Sd/- (Roshan Dalvi,J.)

True copy"

17. Appearing for the appellant, Dr. A.M. Singhvi submitted that by the impugned order dated 10.1.2007 passed in Application No.310/06 filed in Criminal Writ Petition No.1581 of 2006, the Division Bench of the High Court truncated the directions given in its earlier order dated 23.8.2006 though indicating that the same was to clarify the said order of 23.8.2006. Dr. Singhvi submitted that such purported clarification was necessitated on account of the letter dated 7.12.2006 addressed by the Commissioner appointed by the Court to the Registrar raising certain specific queries in respect of six documents which had been previously sent to the Commissioner and stated to be admitted. The High Court further recorded that by the aforesaid letter the Commissioner wanted to know as to which signatures of Shri K.K. Mehta and Sow Charu Kishore Mehta were disputed and which signatures were admitted specifically so as to enable his office to do the needful. He also submitted that the learned Judges had then altered the contents of their earlier order dated 23.8.2006 by observing that since one of the intervenors /complainants had disputed all the signatures of Shri K.K. Mehta in

the Minutes Book and that of Charu Kishore Mehta in 3 letters and the 3 Resolutions, the Commissioner was not required for the present to examine all the signatures in the Minutes Book except those relating to the Resolution dated 22.7.1995, which is the basis of the complaint lodged with Gamdevi Police Station, together with the 3 copies of the Resolutions and 3 letters as observed in the order of 23.8.2006 and to submit his report as early as possible.

18. In support of his aforesaid submission, Dr. Singhvi referred to paragraph 4 of the said order dated 23.8.2006 whereby the Chief Examiner of Documents, Government of Maharashtra, had been appointed as the Commissioner with directions to examine the documents to be produced by the respondent No.1 herein in original, namely;

i) Minutes Book running into 150 pages for the period 31.1.1993 till 31.3.1997;

ii) All the three original letters dated 21.7.1995; and

iii) All 3 original extracts of Resolution dated 22.7.1995.

19. Dr. Singhvi urged that the said directions did not restrict the examination of the Minutes Book only to the Resolution dated 22.7.1995 to which the impugned order dated 10.01.2007 had been confined. He urged that the directions given in paragraph 4 had to be read with paragraph 7 of the order which provided that the parties could assist the Hand-writing Expert in identifying the documents from the Minutes Book which were required to be examined by him. The directions also provided that so far as items 2 and 3 were concerned, all the 3 original letters and Resolutions were required to be examined. Dr. Singhvi contended that paragraph 7 of the order made it very clear that the parties would be entitled to identify not only the Resolution dated 22.7.1995, but all such other documents in the Minutes Book which were required to be examined by the Hand-writing Expert. Dr. Singhvi urged that by the impugned order the width of the initial order was sought to be narrowed down only to the Resolution of 22.7.1995.

20. Dr. Singhvi reiterated the stand taken on behalf of the appellants in Suit No.2444 of 2006 before the City Civil Court at Bombay, instituted by the appellant No.1 herein, wherein the Minutes Book of the Trust containing the minutes of the meetings of the Trust purported to have been held between 31.1.1993 to 31.3.1997 was produced. Dr. Singhvi also reiterated that according to the appellants that was the first time that they had come across the said Minutes Book and by looking into the same they found that the entire Minutes Book contained forgeries and fabrication. He submitted that it is in that context that a prayer had been made by the

appellant No.1 before the Additional Chief Metropolitan Magistrate (4th Court), Girgaum, Mumbai, under Section 94 of the Code of Criminal Procedure for issuance of a search warrant for search and seizure of the said Minutes Book, but the same had been refused by the Magistrate on 15.6.2006 on the ground that investigation under Section 156(3) of the Code in connection with CC No.24/M/2006 was also in progress.

21. In this regard, Dr. Singhvi brought to our notice the photocopies of the recording of the Minutes in the Minutes Book with regard to the meetings purported to have been held on 31.1.1993 and on other dates where the appellant No.1 was shown to be present, although, according to him, he was not present at such meetings. From the said minutes of the meeting held on 31.1.1993 and from various other minutes, including that of the meeting alleged to have been held on 3.5.1993, wherein the expression 'Mumbai' had been used, although, at the said point of time, the usage of the expression 'Bombay' was still prevalent and had not been substituted by the expression 'Mumbai'. He submitted that the same would prima facie establish that the said Minutes had been fabricated at a much later date when the State started using the expression 'Mumbai' in place of 'Bombay'. Dr. Singhvi submitted that it is in such context that an examination of the entire Minutes Book for the period in question became necessary and was contemplated in paragraphs 4 and 7 of the order dated 23.8.2006, and by virtue of the impugned order dated 10.1.2007, the entire purpose of proving the fabrication of the Minutes Book had been rendered infructuous.

22. Dr. Singhvi also contended that the letter of 7.11.2006 addressed by the Commissioner appointed by the Court to the Prothonotary and Senior Master of the High Court, merely required a clarification that since the Resolution dated 22.7.1995 did not contain the signature of Charu Kishore Mehta and in the order of 23.8.2006 these documents had been previously stated to be admitted, it was necessary to know which signatures of Shri K.K. Mehta and Sow. Charu Kishore Mehta were disputed and which signatures were admitted specifically, so as to enable his office to do the needful. Dr. Singhvi submitted that in the impugned order of 10.1.2007 the High Court observed that since all the signatures of the said two persons were disputed, the Commissioner should confine his examination only to the signatures as appearing in the Resolution dated 22.7.1995, thereby truncating the scope of the earlier order dated 23.8.2006.

23. Dr. Singhvi referred to Civil Appeal No.1575 of 2007 which had arisen out of suit No.1997 of 2006 pending before the City Civil Court, Mumbai, wherein appellant No.2, Charu Kishore Mehta, was the plaintiff. The said suit had been filed in respect of one of the four Resolutions passed by the Board of Trustees of the Lilavati Kiritilal Mehta Medical

Trust on 29.4.2006 resolving that she should not interact or communicate with employees and/or consultants of the Lilavati Hospital and Research Centre and/or the Trust save and except through the Board of Trustees of the Trust, and the employees and the consultants were also informed that they were not to take into account any instructions directly given by Mrs. Mehta to them. Dr. Singhvi submitted that while granting leave in respect of the said appeal this Court had by order dated 26.3.2007 come to a conclusion that there was serious dispute between the parties, which could ultimately cause serious difficulties in the running of the hospital which was under the management of the Trust. Accordingly, as a temporary measure, this Court directed that Dr. Narender Trivedi, Vice-President of the hospital and Dr. K. Ramamurthy, Senior Consultant of the hospital, would be in charge of the hospital and of the day to day running of the Hospital and Research Institute. This Court also directed that the two Administrators would take all decisions relating to the administration of the hospital and give a report to the Board of Trustees every two weeks. By a subsequent order dated 20.8.2007 this Court replaced Dr. K. Ramamurthy, as Administrator on his expressing his inability to continue to function as an Administrator due to ill-health and he was replaced by Mr. Justice A.A. Halbe, a retired Judge of the Bombay High Court, as Joint Administrator along with Dr. Narendra Trivedi.

24. According to Dr. Singhvi, a Contempt Petition, being No. 125 of 2007, was, thereafter, filed in respect of the final order passed by this Court disposing of the appeal on 26.3.2007. While considering the contempt application, this Court was informed that the suit filed by the appellant No.2 in the Civil Court, Bombay, had already been dismissed by a Judgment and Order dated 24.9.2007. However, while dismissing the suit, the trial court had continued the order appointing the Joint Administrators for a period of 10 weeks or until further orders of this Court, whichever was earlier. This Court directed the said order to continue for a further period of 10 weeks from 24.9.2007, subject to any interim or final order that might be made in the appeal from the order dismissing the suit or any collateral proceedings. The contempt petition was also dismissed as withdrawn.

25. Dr. Singhvi submitted that in the report filed by Justice Halbe, as one of the Joint Administrators of the Trust, various irregularities were pointed out indicating that there were acts of misappropriation, misfeasance and malfeasance by Trustees Vijay Mehta and Dushyant Mehta and that huge amounts belonging to the Trust had been siphoned off by them. Various details of such alleged misappropriation have been indicated in the Report and the ultimate figure given by the Joint Administrator was computed as Rs.258,90,00,000/-.

26. What Dr. Singhvi tried to convey was that not only had the Trust been completely mismanaged, but

that the Trust funds were being misappropriated by the respondent No.1 and some of the other Trustees. Dr. Singhvi submitted that in the light of the Report filed by Justice Halbe, in his capacity as one of the Joint Administrators, it was all the more expedient not to restrict the examination of the Minutes Book to the Resolution dated 22.7.1995 alone, as has been done by the Bombay High Court in the order impugned in this appeal, but to allow such examination in respect of the other Resolutions contained in the Minutes Book as well, as was originally intended by the order dated 23.8.2006.

27. The first objection taken by Mr. Ranjit Kumar, learned Senior Counsel for the respondents, to Dr. Singhvi's submissions, was that since the criminal complaint was pending before the Magistrate and only a direction had been given under Section 156(3) of the Code of Criminal Procedure, it was not open to the complainant to indicate the manner in which the investigation was to be undertaken. He also submitted that the complaint had originated only after inspection of the Minutes Book had been shown to the appellant No.1 herein in Suit No.2444 of 2006, filed by the said appellant before the City Civil Court at Bombay, praying for a declaration that the Minutes of the meeting alleged to have been held on 21.7.95 and the Resolution adopted therein were forged and fabricated.

28. Mr. Ranjit Kumar also submitted that the petition filed by the appellant No.1 under Section 94 of the Code of Criminal Procedure for issuance of a search warrant had been dismissed by the learned Magistrate on 15.6.2006.

29. Mr. Ranjit Kumar urged that the reference made in the order of 23.8.2006 regarding production of the Minutes Book running into 150 pages for the period from 31.1.1993 till 31.3.1997 had to be read and co-related with paragraph 7 of the order in which the parties were allowed to assist the Hand-writing Expert in identifying the documents from the Minutes Book relating to the Resolution dated 22.7.1995 which was directed to be made available to the Commissioner appointed by the Court for his examination and verification.

30. Referring to the copy of the Minutes of the meeting of the Board of Trustees dated 31.1.1993, 3.5.1993 and copies of other minutes produced by Dr. Singhvi, Mr. Ranjit Kumar submitted that Dr. Singhvi's submissions thereupon were misconceived since the expression 'Mumbai' had been in existence, particularly amongst the Gujarati community in Bombay, from long before the usage was officially recognised by the Government of Maharashtra. In fact, he also referred to a Gujarati newspaper known as "Mumbai Samachar" which had been in publication long before the term 'Mumbai' came to be officially used. Mr. Ranjit Kumar submitted that usage of the word 'Mumbai' in some places in the aforesaid minutes did not automatically establish that they had been fabricated.

31. Regarding the signature of the Chairman of the Board of Trustees in the Minutes, Mr. Ranjit Kumar urged that in normal practice the Minutes could be signed as and when the Chairman was available and his signature at a later date did not indicate that the said Minutes were fabricated.

32. Mr. Ranjit Kumar then referred to the testimony of Charu Kishore Mehta in Suit No.1997 of 2006 wherein she had examined herself as PW-1. It was pointed out that in cross-examination Charu Kishore Mehta admitted that Vijay Kirtilal Mehta, who was made defendant No.10 in the suit, was the Managing Trustee of the Trust, though she was not aware of any meeting having taken place in which he had been so appointed. She also stated that Vijay Kirtilal Mehta was the President and Chief Executive Officer of the Lilavati Hospital, though she did not know since when he had been appointed in such capacity. Mr. Ranjit Kumar submitted that Charu Kishore Mehta also admitted that she was unable to recollect when Vijay Kirtilal Mehta had been reappointed as a Term Trustee for the first and second terms. She was also unable to recollect as to whether Change Report had at all been submitted to the Charity Commissioner in respect of such reappointment and that she also had no knowledge as to when Vijay Kirtilal Mehta ceased to be a Term Trustee as had been contended by her.

33. Mr. Ranjit Kumar then referred to the testimony of Kishor Kirtilal Mehta, who was examined as PW-6, regarding the souring of relations between him and Vijay Kirtilal Mehta and that he believed whatever Mrs. Rekha Haresh Sheth, defendant No.2, had told him at the meetings of the Trust. PW 6 had deposed that from what had transpired in the meetings he fully believed that the said defendant No.2 was not personally involved in the forgery and the fabrication of the documents, though subsequently in the complaint filed by him before the Metropolitan Magistrate he had also involved her along with other Trustees in the allegations of forgery of the Minutes of 22nd July, 1995.

34. Mr. Ranjit Kumar also submitted that the Suit No.2444 of 2006 was dismissed by the learned Judge, City Civil Court at Bombay, and one of the issues involved was whether the plaintiff had been able to prove that even if the meeting of 29th April, 2006 did take place, it was illegal and suffered from the various vices set out in the plaint, or at least some of them, or any of them. He urged that the learned Judge had returned a negative finding on the said issue.

35. Reference was also made by Mr. Ranjit Kumar to a chargesheet filed by the Central Bureau of Investigation against the appellant No.1 and his son regarding the manner in which they were alleged to have deceived people in respect of supply of diamonds, which was said to be the business being conducted by the said appellant. He also referred to the various criminal cases said to have been filed against the appellant No.1 in order to

establish the criminal antecedents of Appellant No.1.

36. Mr. Ranjit Kumar lastly submitted that the Report filed by Justice Halbe did not reflect the view of the other Joint Administrator and had been filed voluntarily and singly, without being asked to do so by the Court.

37. Mr. Ranjit Kumar submitted that the case of the appellant throughout had been that the Minutes of the meeting held on 22nd July, 1995, and the resolution alleged to have been passed therein, were forged and fabricated and taking advantage of the letter written by the Chief Examiner of Documents, CID, the appellant had tried to expand the scope of the specific order dated 28th August, 2006.

38. Mr. Ranjit Kumar submitted that the appellants had filed the appeal to embark upon a roving or fishing enquiry, despite having confined their claim for inspection to the specific resolution of 22nd July, 1995, and the same was therefore, liable to be dismissed.

39. Appearing on behalf of the State, Mr. P.B. Sawant, learned senior counsel, firstly referred to the first complaint made by the appellant No.1 to the Senior Inspector-In-charge, Additional C.P., GB CB CID EOW, Crawford Market, Mumbai, on 3rd May, 2006, to indicate the scope of the enquiry contemplated in such complaint. He particularly referred to paragraphs 3 to 5 of the complaint, which are reproduced hereinbelow:

"3. Recently, me and my wife have received from No.2 copy of certain Minutes of Meeting of Trustees and from Nos.10 to 20 copy of Resolution in the form of true copy of extract with purports to disclose as if No.21 Mr. Vijay Kirtilal Mehta is made a permanent Trustee vide Clause 17 of the Trust Deed as on 22nd July, 1995. They are alleging that in the said Meeting me, my wife, No.2 Mrs. Rekha H. Sheth and Shri Bharat S. Shah were present as recorded in the purported Minutes at pages 81 to 83.

4. It is needless to add that these documents are not only forged and fabricated, but are per se false documents which contain absolutely incorrect facts and have been got up with view to support a false claim with the intention of defrauding the Trust and me and others by forging the said Minutes and the Resolution alongwith my signature. I maintain and reiterate the no such Meeting was ever held nor was No.21, Mr. Vijay Kirtilal Mehta ever appointed as a permanent trustee as is sought to be portrayed dishonestly and falsely.

5. I further state that these documents are part of a pre-planned conspiracy

entered into between all of the above mentioned persons as they all are instrumental in creating such fabricated and backdated documents only to deprive me and my wife of our legitimate rights and to create right in favour of No.21. Mr. Vijay Kirtilal Mehta as permanent trustee, which do not exist."

He also referred to paragraph 6 of the first complaint as also paragraph 6 of the second complaint before the Additional Chief Metropolitan Magistrate, 4th Court Girgaum, Mumbai, to indicate the scope of the complaint which dealt with the alleged fabrication of the Minutes of the meeting of the Board of Trustees alleged to have been held on 22nd July, 1995. Paragraph 6 of the first complaint and paragraph 6 of the second complaint are reproduced hereinbelow one after the other:-

"6. I maintain that there was no such Meeting held and this clearly tentamounts to making a false document and committing forgery and using and possessing the forged document knowing the same to be forged with the intention of committing an offence of cheating which are all done pursuant to a pre-planned conspiracy which involves altering the pages of the Minute Books and creating bogus Minutes as well bogus Board Resolutions and extracts thereof."

"6. Accused No.2 respondent to the said notice by her reply dated 7th of April 2006, written by her Advocate Mr. Amol Inamdar on her behalf, enclosing a copy of the purported Minutes of a meeting of the Board of Trustees of the said Trust allegedly held on 22nd July, 1995, in which among other things, it was falsely alleged that Accused No.1 was appointed as a Permanent Trustee of the said trust aw and from 2nd July, 1995. My wife Smt. Charu K. Mehta, gave a copy of the said letter dated 7th April, 2006 along with its enclosures to me for my perusal. The said purported Minutes copies were hand written and at the foot of the said Minutes, my purported signature has been forged. Annexed hereto and marked as Exhibit 'B' is a copy of the said forged Minutes allegedly bearing my signature. I was taken aback and rudely shocked to see such Minutes as no such meeting had ever taken place and neither I have signed any such Minutes nor was Accused No.1 ever appointed as a Permanent Truestee of the said Trust, as falsely alleged. The said copy of the Minutes per se was forged and fabricated pursuant to a pre-planning among the Accused and others to capture power of the said Trust by ousting me, my wife and the other Trustee. Neither

myself nor my wife and the said Bharat Shah, whose presence has been recorded in the said Minutes were ever present for any such alleged meeting on then purported date viz. 22nd July, 1995 or otherwise."

40. It was lastly submitted by him that on account of the findings of the High Court in its order of 19th October, 2006 with reference to the letter written by the Chief Examiner of Documents on 11th October, 2006, regarding the letter said to have been sent by the appellant No.1 and the directions of the Court to disregard the same, no interference was called for with the judgment and order of the High Court under appeal.

41. Although, lengthy arguments have been advanced on behalf of the appellants and the respondents, all of whom claimed to have an interest in the management of the Lilavati Hospital, being run by the Lilavati Kirtilal Mehta Medical Trust, what we are called upon to decide in the appeal before us is the scope of the order passed by the Division Bench of the Bombay High Court on 23.8.2006 in Criminal Writ Petition No.1581 of 2006 filed by Vijay Kirtilal Mehta, in regard to the examination of the documents enumerated in paragraph 4 of the order in relation to the subsequent order of 10.1.2007 impugned in this appeal.

42. We are, therefore, also required to examine whether the scope and ambit of the directions contained in paragraphs 4 and 7 of the aforesaid order dated 23.8.2006 have in any way been circumscribed by the subsequent order dated 10.1.2007.

43. As has been observed by the Division Bench of the Bombay High Court in its order of 23.8.2006, the subject matter of the writ petition involves the allegations made on behalf of the writ petitioners that a meeting of the Board of Trustees of the Lilavati Kirtilal Mehta Medical Trust had been held on 22.7.1995 pursuant to which a Resolution had been adopted in the absence of the writ petitioner and his wife and that their signatures had been forged in the said Resolution. Consequently, as part of the investigation, certain documents were required to be examined by the Hand-writing Expert. This aspect of the matter has been highlighted both by Mr. Ranjit Kumar and Mr. Sawant appearing for the respondent Trustees and the State of Maharashtra, respectively. It has accordingly been urged by them that the directions given in paragraphs 4 and 7 of the said order of 23.8.2006 will have to be read and understood in that context only.

44. Such submissions have been made to counter Dr. Singhvi's submission that paragraph 4 of the order did not limit the scope of the examination by the Hand-writing Expert only to the Resolution dated 22.7.95, but that paragraphs 4 and 7 of the order of 23.8.2006 taken together clearly indicate that the examination could be undertaken of the entire

Minutes Book itself. It has been urged by him that it is in such context that the entire Minutes Book for the period from 31.1.1993 till 31.3.1997 had been directed to be produced and liberty was given to the parties to assist the Hand-writing Expert in identifying the documents from the Minutes Book which were required to be examined by him and that the Bombay High Court had erred in altering its earlier directions and confining the examination only to the Resolution dated 22.7.1995.

45. In order to decide the question arising in this appeal, we will have to examine the circumstances in which the criminal writ petition, in which the orders dated 28th August, 2006 and 10th January, 2007, were passed, came to be filed.

46. In the first complaint made by the appellant No.1 to the Senior Inspector-In-charge, Additional C.P., GB CD CID EOW, Crawford Market, Mumbai, on 3rd May, 2006, the focus was on the alleged fabrication of the Minutes of the meeting of the Board of Trustees said to have been held on 22nd July, 1995. Paragraph 6 of the complaint, which has been reproduced hereinbefore, categorically alleges that no such meeting had been held and that the pages of the Minutes Book had been altered thereby creating bogus Minutes and bogus Board Resolutions.

47. In the complaint made before the Additional Chief Metropolitan Magistrate, 4th Court, Girgaum, Mumbai, it has also been specifically stated that although in the Minutes of the meeting alleged to have been held on 22nd July, 1995, the appellant No.1 and his wife, Charu Kishore Mehta, had been shown to be present, they were neither present at the meeting nor have they signed the Minutes as had been sought to be represented in the Minutes Book.

48. It may be noted that on 22nd May, 2006, the Additional Chief Metropolitan Magistrate directed investigation into the complaint filed by the appellant No.1, under Section 156(3) Cr.P.C. and on 24th July, 2006, pursuant to such order, the Gamdevi Police Station directed the respondent No.1 to produce the Minutes Book of the meetings of the Board of Trustees for the period from 31st January, 1993, till date, together with the Resolution adopted on 22nd July, 1995 and the letter of 21st July, 1995 signed by the appellants and Smt. Rekha Sheth.

49. In the meantime, the appellant No.1 also filed Suit No.2444 of 2006 on 13th May, 2006, in the City Civil Court at Bombay for a declaration that the Minutes of the meeting of the Trustees, alleged to have been held on 22nd July, 1995, and the Resolution adopted therein, were forged and fabricated. Significantly, it was on 21st May, 2006, during the hearing of the appellant No.1's prayer for interim relief in the said suit, that the Minutes Book of the Trust for the period between 31st July, 1993 and 31st March, 1997, was produced by the respondent before the Court and according to the appellants, it was on such occasion that for the

first time they came across the Minutes Book which on examination was found to be full of forgeries and fabrications.

50. It may also be noted that the criminal complaint and the suit were both proceeded with simultaneously, but the order for examination of the Minutes Book and the Resolution of 22nd July, 1995 and the letter of 21st July, 1995, were passed by the Bombay High Court in the proceeding arising out of the criminal complaint before the Additional Chief Metropolitan Magistrate. It may, therefore, be concluded that the directions contained in the order passed by the Bombay High Court on 23rd August, 2006, was made on the basis of the complaint before the Magistrate and not on the basis of what had been discovered when the Minutes Book had been produced before the City Civil Court at Bombay in connection with Suit No.2444 of 2006 filed by the appellant No.1 herein. In fact, the relief prayed for in the suit was also limited to a declaration that the Minutes of the meeting held on 22nd July, 1995 and the Resolution passed therein were forged and fabricated.

51. It is obvious that certain new materials were discovered by the appellants after examining the Minutes Book which had been produced by the respondent No.1 before the City Civil Court at Bombay, and the same has inspired the appellants to claim that the directions given on 23rd August, 2006, by the Bombay High Court covered examination of the entire Minutes Book and was not only confined to the Minutes of the meeting held on 22nd July, 1995 and the Resolution subsequently adopted. As indicated hereinbefore, the High Court was apparently aware of the aforesaid situation and thereby limited the examination of the Minutes Book to the Minutes of the meeting said to have been held on 21st July, 1995, for the present (emphasis supplied).

52. In our view, the High Court did not restrict further examination of the Minutes Book, if required, but for the purpose of the complaint filed before the Additional Chief Metropolitan Magistrate, the High Court seems to have taken the view that the examination by the Handwriting Expert of the Minutes of the meeting held on 21st July, 1995, was sufficient and it ordered accordingly.

53. The matter is still pending before the Bombay High Court and should any further examination of the Minutes Book of the Trust be necessary, it will always be open to the complainant-appellant No.1 herein to apply for such further examination in the pending proceedings.

54. We, therefore, see no reason to interfere with the order passed by the Bombay High Court on 10th January, 2007, which has been challenged in this appeal, since, in our view, the High Court was compelled to pass such order on account of the dispute raised about the authenticity of various signatures in the Minutes Book purported to be that

of the appellants herein.

55. We accordingly dismiss the appeal, but we also make it clear that the directions given by the Bombay High Court in the order of 10th January, 2007 have been made in praesenti and will not in any way preclude further examination of the Minutes Book.

JUDIS