

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 941 OF 2014

Shivchandra s/o. Sayabanappa Revate
and Ors.

....Petitioners.

Versus

The State of Maharashtra and Anr.

....Respondents.

Mr. R.N. Dhorde, Senior Counsel i/b. Mr. V.G. Sakolkar, Advocate
for petitioners.

Mr. B.L. Dhas, APP for State.

Mr. Pradeep Deshmukh h/f. Mr. Y.P. Deshmukh, Advocate for
respondent No. 2.

**CORAM : T.V. NALAWADE &
SMT. I.K. JAIN, JJ.**

DATED : 20th March, 2015.

ORDER :

1. The petition is filed under section 482 of Criminal Procedure Code and Articles 226 and 227 of Constitution of India for setting aside the order made by the learned Judicial Magistrate, First Class under section 156 (3) of Cr.P.C. and also for quashing of the F.I.R. in a crime registered in Murum police station on the basis of directions given by the learned J.M.F.C. It was submitted that chargesheet is also filed after completing the investigation and so, the relief of quashing of case itself is sought. Both the sides are heard.

2. Original complainant Tatyasaheb Shivgonda Patil has contended that he had joined the private company of the present petitioners after negotiations and promise was given to him to make him Director and due to that he had made investment of huge amount in the company. Two other persons were made Directors by taking amount from them. The Memorandum of Understanding (MOU) was prepared. Subsequently, one of the three new investor left the company, but Tatyarao remained in the company. New MOU was created and one more persons Mahesh was accepted as investor in the company. The submissions made show that Tatyarao and Ramgonda had invested the amount of Rs. 20 lakh and the new investor Mahesh had invested the amount of Rs. 8.7 lakh.

3. The learned Senior Counsel submitted that applicants are admitting that there was investment of Rs. 20 lakh of Tatyarao and Ramgonda. This investment was made in the year 2005 and 2006. It appears that on 23.9.2010 behind the back of the investors, the present applicants, who were controlling the company made agreement to sell the entire property of the company to one Motewar for the consideration of Rs. 1.85 Crore. On that day, the amount of Rs. 80 lakh was

accepted by the applicants. It is contended that the said amount was passed to Maharashtra State Financial Corporation. Submission was made by the learned Senior Counsel that the remaining amount of more than Rs. 35 lakh was not yet paid and this dispute took place and due to that present applicants were required to file the civil suit. The said suit is still pending.

4. The learned Senior Counsel submitted that under the new MOU, the complainant and other investors had agreed to invest the amount of Rs. 50 lakh, but no such amount was invested and due to that the company suffered losses. The learned Senior Counsel submitted that due to that the aforesaid agreement was made and the loan of MSFC was paid. The learned Senior Counsel submitted that notice was published in newspaper and it cannot be said that the proposed transaction was not within the knowledge of the complainant and the complainant was deceived.

5. This Court has considered the submissions and the contents of various MOU signed by both the sides. Admittedly, the amount of Rs. 20 lakh was deposited by the complainant and others and subsequently, one more investor allegedly invested more amount and thus, the amount of investors was involved in

the company and they had the right and interest in the property of the company. In spite of these circumstances, behind the back of the complainant, the aforesaid agreement was made and after making the agreement, the amount was actually received. Though there is the dispute over the possession of property, it appears that purchaser is saying that the purchaser has received the possession of the property. These submissions are sufficient to make out the case for offence punishable under sections 420 and 406 of I.P.C. On the basis of aforesaid material, the learned J.M.F.C. has not committed any error in giving directions under section 156 (3) of Cr.P.C. and also taking the cognizance of the offence after filing of the chargesheet. No error apparent is noticed in the said order. There is no jurisdictional error. It is not possible to use the power under section 482 of Cr.P.C. and the power under Articles 226 and 227 of Constitution of India.

6. In the result, the petition is dismissed. Interim relief, if any, is vacated.

[SMT. I.K. JAIN, J.]

[T.V. NALAWADE, J.]

ssc/