

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

CRIMINAL WRIT PETITION NO. 156 OF 2015

Ashok Radheshyam Dhanuka & Anr.

.. Petitioners

v/s.

The State of Maharashtra & Anr.

..Respondents

Mr. Subhodh Desai a/w Dileep Safale i/b Mulani & Co. for the petitioners

Mr. S.V. Marwadi i/b K.S. Garg for respondent no.2

Mrs. S.V. Sonawane, APP for the respondent State

CORAM : RANJIT MORE &

SMT. ANUJA PRABHUDESSAI, JJ.

DATED : 3rd FEBRUARY, 2015.

P.C.

1. Heard learned Counsel for the respective parties. Rule. Rule is made returnable forthwith. By consent, the petition is taken up for final hearing.

2. This petition is filed under Article 226 of the Constitution of India and under the provisions of Section 482 of the Cr.P.C. for quashing M.E.C.R. No.01 of 2015 registered at the instance of respondent no.2 with Phydhonie Police Station, Mumbai for offence

punishable under Sections 406, 420, 465, 467, 468, 419, 34, 120-B of the IPC.

3. The respondent no.2 filed private complaint before the Magistrate, being Case No.0200299/SW/14, against Ashok Kesharia and others seeking prosecution under the provisions of Sections 406, 420, 465, 467, 468, 419, 34, 120-B of the IPC. The learned Additional Metropolitan Magistrate, 2nd Court Mazgaon, Mumbai by its order dated 22.12.2014 passed under Section 156 of the Cr.P.C. directed Phydhonie Police Station to carry out investigation and submit a report thereof within two weeks. On the basis of this order, the above referred M.E.C.R. was registered against Mr. Ashok Kesharia and others named in the complaint. Surprisingly, allegations are also made against the petitioners and they have been made accused. The petitioner no.1 is an advocate on record for Ashok Kesharia and others, who are accused person in the said complaint and petitioner no.2 was arguing counsel of the said accused person.

4. A perusal of the complaint does not disclose any allegations against the present petitioners. The allegations were made only against Mr. Ashok Kesharia and others, who were arraigned as accused in the said complaint. However, present petitioners have been arraigned as accused based on the statement made by respondent no.2 to the police. Perusal of the M.E.C.R. and the statement, makes it clear that the present petitioners were arraigned as accused only because they represented Mr. Ashok Kesharia and others in the civil litigation.

5. Respondent no.2 has filed an affidavit dated 30.01.2015. In paragraph no.7, the respondent no.2 has made a statement that the petitioners may not be arrested or action may not be taken against them until any *prima facie* evidence and material is found against them.

6. Mrs. Sonawane, learned APP for respondent State, on the basis of instructions from Mr. Solankar, PSI, Pydhonie Police Station,

Mumbai who is present in the Court makes a statement that the M.E.C.R. in question may be quashed qua the petitioners only. Otherwise also, having gone through the complaint and statement of respondent no.1, we find that the petitioners were arraigned as accused only because they represented Mr. Ashok Kesharia and others accused persons in the said complaint. We also find that no cognizable offence is made out against the present accused.

7. In the above circumstances, rule is made absolute in terms of prayer clause (A). The investigation of the M.E.C.R. shall be carried out independently on its own merit and without being influenced by the observations made hereinabove.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)