

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1121 OF 2015

Nilesh Hirachand Pagariya and Another. ..Petitioners.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. Subhash Jha and Ms. Rushita Jain i/b Law Global for the
Petitioners.

Mr. K. V. Saste, learned APP for the State.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **June 15, 2015.**

P. C. :

1. Heard Mr. Jha, learned Counsel appearing for the
Petitioner and Mr. Saste, learned APP for the State. The
Petitioner has invoked the jurisdiction of this Court under Article
226 of the Constitution of India seeking to quash the FIR bearing
No. 203 of 2014 registered with Dattawadi Police Station, Pune at
the instance of Respondent No.2 for the offence punishable
under sections 420, 467, 471 and 120B read with 34 of the Indian
Penal Code, 1860.

2. Learned Counsel appearing for the Petitioner makes
two-fold submissions. Firstly that Respondent No.2 complainant

directly approached the learned Magistrate by filing a private complaint and learned Magistrate by his order dated 26th March 2014 directed the investigation under section 156(3) of the Code of Criminal Procedure, 1973 , pursuant to which the aforesaid FIR is registered. He submitted that before approaching the Magistrate, Respondent No.2-complainant has not approached the police as contemplated under sub-sections (1) and (3) of section 154 of the Code. He relies upon Full Bench decision of this Court in Panchabhai P. Buthani vs State of Maharashtra, reported in 2010 All M.R. (Cri.) 244. He secondly submitted that disputes between the parties is of civil nature and allegations do not *prima facie* disclose commission of any cognizable offence. In this regard, he submitted that civil suit between the parties is pending and this dispute can be referred to Mediation by this Court.

3. Mr. Saste, learned APP for the State opposed the petition very vehemently. He submitted that investigation is over and charge-sheet is ready. He further submitted that the allegations do disclose the commission of offence and therefore

no interference is called for at the hands of this Court.

4. Having considered the rival submissions, we are not inclined to entertain the writ petition. So far as the contention of Mr. Jha that the order passed by learned Magistrate under section 156(3) and the subsequent investigation is *void ab initio* is concerned, we do not find any merit in the same. The Full Bench of this Court in Panchabhai's case (supra) has also held that normally the Complainant is required to approach the police machinery under section 154 of the Code and thereafter is expected to approach the Magistrate. The Full Bench has further held that in exceptional cases, the Complainant can directly approach the Magistrate under section 156(3). Mr. Jha in this regard submitted that there are no reasons in the private complaint as to why the Complainant approached the Magistrate under section 156(3) of the Code without first going to the police. We are not inclined to accept this submission in the peculiar facts of the present case especially when the investigation is already over and charge-sheet is ready. We are also unable to accept the contention of Mr. Jha that entire investigation carried out

pursuant to the order passed by learned Magistrate under section 156(3) is *non-est* merely because, the Complainant directly approached the Magistrate under section 156(3) of the Code.

5. The second submission of Mr. Jha that complaint does not disclose the commission of cognizable offence is concerned, we have gone through the complaint. We *prima facie* find that there are allegations about the commission of cognizable offences. In any case, the investigation is over and charge-sheet is ready. The veracity of those allegations cannot be gone into at this stage. As far as the Petitioner's submission that dispute can be referred to Mediation is concerned, the civil suit between the parties is pending and the Petitioner has already made prayer therein for mediation.

6. Taking totality of the facts and circumstances of the case into consideration, we do not find any reason to entertain this writ petition and same is therefore dismissed.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]