

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

CRIMINAL WRIT PETITION NO. 2298 OF 2014

Avinash B. Avhad

..Petitioner

v/s.

The State of Maharashtra & Ors.

..Respondents

Mr.Shirish Gupte, Sr. Advocate i/b. Ruchita Dhuru for the Petitioner.
Mr.S.K.Shinde, PP a/w. Mr.K.V.Saste, APP for the Respondent/State.
Mr.PK.Dhakephalkar, Sr. Adv. i/b. Mr. Surel Shah and Mr.S.S.kanetkar
for the intervenor.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : FEBRUARY 09, 2015.**

P.C.

1. Heard Mr. Gupte, learned Senior Counsel for the petitioner, Mr. Shinde, learned APP for the State and Mr. Dhakephalkar learned Sr. Counsel for the intervenor.
2. This petition under Article 226 of the Constitution of India is filed seeking direction to the respondent to register an offence against the accused persons named in the complaint dated

25.5.2014 for offence punishable under Section 406, 409, 420, 467, 468, 471 r/w. 120B of IPC.

3. We have gone through the complaint, copy of which is annexed at Exhibit A to the complaint. The main allegations are that the accused persons in furtherance of their common intention hatched conspiracy to defraud MAEER Trust and misappropriated the funds of the said trust so as to gain unlawfully. The allegations are made that without inviting tenders the contracts are unlawfully given to their favourite contractors, and the contract money was subsequently inflated, thereby causing huge losses to the MAEER Trust and unlawful gain to the accused. The petitioner alleged that the accused have committed various offences as referred to herein above since the year 2005 till the date of filing of the complaint.

4. The petitioner and his father were also the trustees of the said trust along with the trustees against whom the allegations are made. It appears that there is dispute among the two groups of the trustees, one headed by the petitioner and his father and the other headed by the accused named in the complaint. Allegation is also made that the accused had done the misappropriation in connivance with the

chartered accountant.

5. The respondent no.5, the police inspector thereafter chose to hold an preliminary enquiry. Mr. Gupte, learned Senior Counsel submits that this was not the case where the respondent no.5 could have chosen to hold preliminary enquiry. He submits that the complaint does prima facie disclose commission of cognizable offence and therefore FIR ought to have been registered. We are unable to agree with the submission of the learned Senior Counsel Shri Gupte.

The constitution Bench of the Apex Court in case of *Lalita Kumari vs. State of UP (2014) 2 SCC* laid down the following procedure:

120.1 The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2 If the information received does not disclose a cognizable offence but indicates the necessity for an enquiry, a preliminary enquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the enquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary enquiry ends in the first information forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4 The police officer cannot avoid his duty of

registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5 The scope of preliminary enquiry is not to verify the veracity or otherwise of the information received but only to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6 As to what type and in which cases preliminary enquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary enquiry may be made are as under:

- (a) Matrimonial disputes/family disputes.
- (b) Commercial offences.
- (c) Medical Negligence cases
- (d) Corruption cases.
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.”

Having gone through the allegations made in the complaint we are of the considered view that present case falls in clause “e” of para 120-6 and therefore the respondent no.5 was justified in holding preliminary enquiry.

6. The respondent no.5 has filed an affidavit. The affidavit discloses that during the course of inquiry statement of the accused

persons have been recorded. The affidavit also disclosed that the respondent no.5 has gone into the allegations made in the complaint. The respondent no.5 after going through the complaint and the statements recorded during the preliminary enquiry called for legal advice and thereafter formed the opinion that the nature of the allegations made by the petitioner in his complaint are vague, general in nature. It was also found that no specific date, time and the name of the person is mentioned in the complaint. It was further found that it is not clear from the complaint that the accused have committed the alleged offence. During enquiry it was also revealed that the proceedings are pending before the Charity Commissioner under various provisions of the Bombay Public Trust Act on similar allegations. Ultimately, they concluded that the allegations are civil in nature and the same does not disclose commission of cognizable offence and accordingly refused to register the offence.

7. If the petitioners are aggrieved by the refusal of registration of the FIR after holding a preliminary enquiry by the respondent no.5, they have remedy to file complaint under Section 200 of Cr.P.C. The remedy which the petitioners have invoked by the above petition is of

extra ordinary in nature. The petitioner could not seek redressal about this grievance in situation where statutory remedies are available. Since the petitioner has alternate efficacious remedy to approach the Magistrate to redress his grievance, we are not inclined to interfere in the writ jurisdiction. Writ petition is accordingly dismissed.

8. Needless to mention that the above observations are made for the purpose of disposal of this petition and in the event the petitioner adopts statutory remedy under the provisions of Section 200 of Cr.P.C. then the concerned Magistrate shall dispose of the same independently on its own merits and without being influenced by the above observations.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)