IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2659 OF 2013

M/s Urban Infrastructure Venture
Capital Ltd. .... Petitioner.

V/s

The State of Maharashtra
& Anr. ...... Respondents.

ALONGWITH
CRIMINAL APPLICATION NO.4 OF 2014
IN
CRIMINAL WRIT PETITION NO.2659 OF 2013

Kishor Nandlal Shah & Ors. .... Applicants/Interveners

In the matter of

M/s Urban Infrastructure
Venture Capital Ltd. ...... Petitioners.

V/s

The State of Maharashtra & Anr. ..... Respondents.

Amit Desai, Senior Counsel i/b Mr. A.M. Chimalkar for the Petitioner.

Mr. J.P. Yagnik, APP for the State.

Mr. Shirish Gupte, Senior Counsel alongwith Mr. M.S. Mohite i/b Kartikeya & Associates for the Applicants/Interveners in Criminal Application No.4 of 2014.

CORAM: V.M. KANADE &
SMT. ANUJA PRABHUDESSAI, JJ.

Order reserved on : 04/02/2015
Order pronounced on : 24/02/2015
(In Chamber at 2.35 P.M.)

P.C.: ***(V.M. KANADE, J.)***

1. By this Petition which is filed under Article 226 of the Constitution of India, Petitioner is seeking an appropriate writ, order and direction, directing Respondents to register an offence and to investigate the same in accordance with law.

2. Brief facts are as under:-

3. Petitioner is a Company registered under the Companies Act and is the settlor or Urban Infrastructure Venture Capital Fund (UIVCF) which is a SEBI registered Venture Capital Fund in the Real Estate Sector. Petitioner has been appointed as the Investment Manager of the said UIVCF. The said UIVCF through its scheme of Urban Infrastructure Opportunity Fund (UIOF) accepted amounts from over 750 high net-worth individuals, corporate, public and financial institutions such as Life Insurance Corporation of India (LIC), State Bank of India (SBI), General Insurance Corporation of India (GIC), Oriental Insurance Company Limited (OICL), United India Insurance Company Limited (UIIC), Naval Group Insurance Fund (NGIF), Bank of Baroda (BOB), Syndicate Bank, Corporation Bank, Oriental Bank of Commerce

(OBC), Central Bank of India (CBI), UCO Bank, IDBI Bank, as investments and, in turn, the Petitioner invested the said amounts in accordance with the Venture Capital fund Regulations of SEBI in various unlisted companies carrying on business of real estate developments.

4. Petitioner entered into Subscription Agreement dated 24/04/2008 with Joyce Realtors Private Limited. It is the case of the Petitioner that from time to time huge amounts of monies were released by the Petitioner and given to the accused in trust for a purpose. It is the case of the Petitioner that the accused represented that the Petitioner would start receiving returns on their investments once the construction would begun at the site after necessary sanction and approval was granted by the concerned authorities. According to the Petitioner, however, the projects were not completed in time and therefore the Petitioner – Company was constrained to file a complaint with the Additional Commissioner of Police, Economic Offence Wing ("EOW"), Crime Branch, Mumbai- 400001, dated 28/03/2012. According to the Petitioner, Economic Offence Wing summoned the representatives of the Petitioner on number of occasions and various clarifications were asked regarding copies of the documents relied upon by them and, according to the Petitioner, even the accused were summoned and they were questioned on several occasions. Petitioner was informed that the Investigating Officer, the Senior Inspector of Police EOW Unit III, Assistant Commissioner of Police EOW, Deputy Commissioner of Police EOW and Additional Commissioner of Police EOW were satisfied

that the criminal offence had been committed by the accused and crime would be registered in the MRA Police Station, Mumbai. However, no complaint was registered against the accused. Petitioner, however, was informed by letter dated 16/02/2013 which was signed by Respondent No.2 - Senior Inspector of Police, Economic Offence Wing that no cognizable offence was disclosed.

5. Petitioner, thereafter, filed an application under RTI addressed to the State Public Information Officer. Petitioner received reply from the Public Information Officer dated 22/03/2013 that no document in respect of which the Petitioner had sought the inspection of could be made available to the Petitioner. According to the Petitioner, though, initially, in June 2012, Investigating Officer had recommended fling of FIR which was also confirmed by Respondent No.2 – Senior Inspector of Police, EOW and others, a decision was thereafter taken not to register the offence. Petitioner, therefore, has filed this Petition under Article 226 of the Constitution of India, seeking a direction from this Court directing Respondent No.2 to register the offence against the accused.

6. On the other hand, an affidavit-in-reply has been filed by the Respondents, stating therein that the Petitioner – Company has an alternative efficacious remedy of filing a private complaint. It is submitted that the EOW, after making a preliminary inquiry had come to the conclusion that no cognizable case is made out. It is, therefore, submitted that relief claimed by the Petitioner may not

be granted by this Court.

7. Criminal Application also has been filed for intervention by certain share holders who have share in the Petitioner – Company. In the application, the applicants have stated that the Petitioner – Company has suppressed material facts. It is submitted that the matter has already be referred to the Arbitrator and is pending before the Arbitral Tribunal. They have further stated that the Petitioner has filed several summary suits and civil suits in Civil Court and after having failed to obtain necessary interim orders, by arm twisting tactics, the Petitioner has filed this Petition seeking a direction that FIR should be registered against the accused.

8. Mr. Amit Desai, the learned Senior Counsel appearing on behalf of the Petitioner, submitted that after the complaint was lodged with the Additional Commissioner of Police, EOW, Crime Branch, Mumbai on 28/03/2012, EOW had carried out preliminary investigation for a long time which is contrary to the law laid down by the Full Bench of this Court in *Sandeep Rammilan Shukla vs. The State of Maharashtra*[1] which provided that the preliminary inquiry should be completed within 48 hours of the complaint being filed. He also submitted that the Investigating Agency was under an obligation to inform the complainant about the status of the complaint within a reasonable time. He relied upon the judgment of the Apex court in *Smt. Vijaya Vasant Nikam vs. The*

1 2008 ALL MR (Cri) 3486

State of Maharashtra[1] which was delivered in Criminal Writ Petition No.3386 of 2012. He submitted that pursuant to the directions of this Court, Director General of Police has issued Standing Order No.20 of 2012 in which a direction was given that on a complaint being filed, FIR has to be registered and copy of the FIR should be given to the complainant and the result of the preliminary inquiry should be informed to the complainant within three days of filing of the complaint. He submitted that this procedure had not been followed by the police.

9 The learned Senior Counsel appearing on behalf of the Petitioner then submitted that from the information received by the Petitioner after RTI application was filed, it was revealed that, initially, Senior Inspector of Police and other Senior Officers had come to the conclusion that cognizable case was made out and that the FIR should be registered at a particular Police Station. He submitted that, however, other notings on the files of which inspection was taken by the Petitioner revealed that the matter travelled twice to Superior Officers and certain notings were scored off or fudged or altered and, thereafter, decision was taken not to file the FIR. The learned Counsel appearing on behalf of the Petitioner has relied upon the following judgments:-

1. Sandeep Shukla vs. State of Maharashtra[2]
2. Lalita Kumari vs. Government of Uttar Pradesh & Ors.[3]

---

1 2013 BomCR (Cri) 286
2 2008 ALL MR (Cri) 3486
3 (2014) 2 SCC 1

3. Smt. Vijaya Vasant Nikam vs. State of Maharashtra[4]
4. M.C. Mehta vs. Union of India[2]
5. Ramesh Kumari vs. State (N.C.T. Of Delhi) and Ors[3]

10. The learned Senior Counsel appearing on behalf of the Petitioner invited our attention to the noting made by the Investigating Officer on 19/06/2012 recommending the registration of FIR. He has then invited our attention to the endorsement made by the Investigating Officer making similar recommendation which was approved by the Senior Police Inspector – Respondent No.2 which is found from his noting dated 17/10/2012. He then invited our attention to the noting/endorsement made by the Deputy Commissioner of Police dated 25/10/2012. He also invited our attention to the noting made by the Additional CP, EOW dated 30/10/2012 who accepted the recommendations. It was submitted that the Police had failed to register the FIR, which was based on extraneous considerations and which is contrary to the law laid down by the Supreme Court.

11. On the other hand, Mr. Shirish Gupte, the learned Senior Counsel appearing on behalf of the accused submitted that the Petitioner had an alternative efficacious remedy of filing private complaint upon the report being submitted by the police that no cognizable case was made out against the accused. He relied upon the following judgments in support of his submission:-

4 2013 BomCR (Cri) 286
2 (2006) 7 SCC 456
3 (2006) 2 SCC 677

1.	All India Institute of Medical Sciences Employees Union (Regd.) through its President Vs. Union of India & Ors.	(1996)1 1 SCC 582
2.	Gangadhar Janardan Mhatre Vs. State of Maharashtra & Ors.	(2004) 7 SCC 768
3.	Ramesh Kumari Vs. State (NCT of Delhi) & Ors.	(2006) 2 SCC 677
4.	Minu Kumari & Anr. Vs. State of Bihar & Ors.	(2006) 4 SCC 359
5.	Hari Singh Vs. State of U. P.	(2006) 5 SCC 733
6.	Lallan Chaudhary & Ors. Vs. State of Bihar & Anr.	(2006) 12 SCC 229
7.	Aleque Padamsee & Ors. Vs. Union of India & Ors.	(2007) 6 SCC 171
8.	Sakiri Vasu Vs. State of Uttar Pradesh & Ors.	(2008) 2 SCC 409
9.	Divine Retreat Centre Vs. State of Kerala	2008 ALL MR (Cri.) 1300 SC
10.	Chagan Chandrakant Bhujbal in the matter of Sunil Gangadhar Karve Vs. The State of Maharashtra & Ors.	Criminal Application No. 365 of 2012 in Criminal Writ Petition No. 1608 of 2012

12. The learned Counsel appearing on behalf of the State has invited our attention to the affidavit-in-reply filed by the Investigating Officer. He submitted that, initially, though Investigating Officer had come to the conclusion that there was misappropriation of the amounts by the accused, he was advised by Senior Inspector of Police to obtain Bank Statements of the Non-Applicants to ascertain diversion of funds. In the reply, it is

further submitted that, initially, Non-Applicants were not in a position to furnish the required details. However, thereafter, a detailed representation was made by the Non-Applicants to the Joint Commissioner of Police, who directed the Investigating Officer to consider the said representation. The Investigating Officer, after having examined the contracts which were entered into between the parties, has observed that the amounts paid by the Petitioner to the Non-Applicants were under the head of 'Security Deposit' which was to be held by the Non-Applicants at the rate of 6% interest till completion of the Project. He further noticed that no amount has been paid to third parties. He, therefore, came to the conclusion that the allegation of the Petitioner that Non-Applicants had used the amounts for their personal reason was not appearing to be proper and the rights, duties and obligations between the parties were clearly spelt out in the contract and the dispute essentially was of a civil nature. It is further stated in the reply the circumstances under which the earlier report had been cancelled and fresh inquiry was ordered.

13. After having heard both the Counsels at length, we are of the view that though there is some substance in the contention of the Petitioner that, firstly, the Respondents were duty bound to complete the investigation within two days, as laid down by the Full Bench of this Court in *Sandeep Shukla vs. State of Maharashtra*[1] and by the Apex Court in *Lalita Kumari vs. Government of Uttar Pradesh & Ors*.[2] and, secondly, though they

1 2008 ALL MR (Cri) 3486
2 (2014) 2 SCC 1

were bound to inform the Petitioner within three days of filing of the complaint they had not done so, yet the detailed affidavit-in-reply filed by the Respondents clearly discloses that certain information was called for from the Petitioner and after going through the averments made in the contract, on the information supplied by the Non-Applicants, at the preliminary inquiry, though, initially, the Investigating Officer had come to the conclusion that there was diversion of funds, upon the closer scrutiny of the material on record, police had come to the conclusion that, in fact, there was no diversion of funds and the dispute was purely of a civil nature. Secondly, though the complaint was filed in 2012, the Petitioner had waited almost for a period of one year when no action was taken by the police and during this time, Petitioner could have filed a private complaint. Instead of doing that the Petitioner chose to file an application under RTI Act and waited almost for a period 3 years and then has filed the present Petition. There is therefore gross delay on the part of the Petitioner in approaching this Court when the Petitioner could have very well exhausted the alternative remedy which was available with them. Thirdly, dispute between the parties has been referred to the Arbitral Tribunal and the arbitration proceedings are pending. Lastly, the Petitioner – Company has also filed civil suit in civil court for recovery of amounts which proceedings are also pending and thereafter the Petitioner has filed the present Petition.

14. There is much substance in the submission made by the learned Counsel appearing on behalf of the Respondents that

the Petitioner could have availed of the alternative remedy which is available to them of filing a private complaint before the Magistrate.

15. We are, therefore, not inclined to give direction as prayed for by the Petitioner in this Petition. Petition is therefore dismissed, reserving the right of the Petitioner to avail the alternative remedy which is available to them. If such a complaint is filed, the same may be decided expeditiously.

16. Writ Petition is disposed of in the aforesaid terms. Since the Writ Petition itself is dismissed, Criminal Application No.4 of 2014 taken out therein does not survive and it is also disposed of.

(ANUJA PRABHUDESSAI, J.) **(V.M. KANADE, J.)**

bdpps/tav