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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3520 OF 2014**

Shri Saikat Tapan Chatterjee and Ors. ... Petitioners

Versus

State of Maharashtra and anr. ... Respondents

Mr. S.P. Nikam with Mr. Abhijit Kadam for the petitioners.

Mr. Rajiv More, A.P.P. for the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : JUNE 23, 2015**

P.C.

Admit. Heard finally.

Heard learned counsel for the petitioners and learned A.P.P. for the State.

The petitioners are accused of the offence punishable under section 406 and 420 read with 34 of Indian Penal Code. The petitioners had taken Rs.18,50,000/- from respondent no. 2 Homraj Pastakia on the pretext that they will start business in the name and style of Career Hub. Petitioner no.2 had also assured respondent no. 2 that the amount will be returned once the business starts. Accordingly the said amount was paid by respondent no. 2. It appears that the business started. Respondent no. 2 therefore, demanded the money back. A fresh memorandum of understanding was executed between respondent no. 2 and petitioner no. 1

in which petitioner no.1 had agreed to pay the balance amount in few installments.

2. Learned counsel submits that the dispute was of civil nature and that respondent no.2 could not have filed a complaint under section 156(3) of Cr.P.C. It is submitted that the conclusion arrived at by the police that the petitioners have committed the offence punishable under section 406 and 420 read with 34 of Indian Penal Code is incorrect. It was brought to my notice that there was clause in the MOU which entitled both the parties to ask for specific performance of the contract in case of violation of terms and conditions of the MOU.

3. Respondent no. 2 in his complaint stated that there was dishonest intention on the part of the petitioners since beginning. Therefore, he was induced by them to part with huge amount of Rs.18,50,000/-. During the course of hearing of the present writ petition, which challenges the order of the Magistrate and Sessions Court rejecting the prayer of the petitioners, it was noted that the petitioners have not paid the said amount till today. Mr Nikam would submit that the complaint filed by respondent no. 2 was premature complaint as period of one year from the date of execution of the MOU was provided to petitioners for discharging the liability. Respondent no.2 should have waited for one year to file a complaint. In my opinion, this ground does not help him inasmuch as the cheque for the second installments was dishonoured by the bankers of the petitioner no. 2. As such prima facie there appears to be the case of criminal breach of trust and cheating. As regards petitioner nos. 2 and 3, it may be noted that respondent no. 2 has alleged that petitioner no. 2 had also made representations which induced respondent no. 2 to part with huge amount. Petitioner no. 3 had also assured respondent no. 2 that the amount shall be returned within stipulated

time.

4. Since the amount is not returned within stipulated time and is not returned till today, it can safely be stated that there is prima facie case for the offence punishable under section 406 and 420 read with 34 of Indian Penal Code. The money entrusted to the petitioners has been misappropriated by them and they have induced respondent no.2 to part with the huge amount on the basis of false representations made by the petitioners to respondent no. 2.

5. In my opinion, the learned Magistrate and learned Sessions Court has rightly rejected the prayer of the petitioners for grant of discharge. I find no substance in the present writ petition. The writ petition therefore, stands dismissed.

6. The trial of the case be expedited and the case be concluded by the trial Magistrate within the period of 6 months from the date of this order. The learned Magistrate shall not get influenced by the observations made in the present order as they are prima facie in nature.

(JUDGE)