# IN THE HIGH COURT OF JUDICATURE AT BOMBAY, BENCH AT AURANGABAD.

## CRIMINAL WRIT PETITION NO. 103 OF 2015

1. Ishwarlal Shankarlal Jain,
   (Lalwani) Age - 70 years,
   Occu - Business, R/o. 169,
   Johari Bajar, Jalgaon,
   Tq. & Dist. Jalgaon.

2. Manish Ishwarlal Jain,
   Age - 46 years, Occu- Business,
   R/o. As above. … **Petitioners**

*VERSUS*

1. The State of Maharashtra
   Through Police Inspector
   Jamner Police Station,
   Jalgaon, Dist. Jalgaon.

2. The Deputy Superintendent,
   Police State C.I.D., Jalgaon at Jalgaon.

3. Ravindra Laxman Barhate,
   Age - 50 years, Occu- Business,
   R/o. 454, Shanivar Peth,
   Pune-3. … **Respondents**

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Mr D. B. Thoke-Patil, Advocate for the petitioners
Mr P. P. Chavan, Public Prosecutor for respdt. No.1 & 2.
Mr A. R. Syed, Advocate for respondent No. 3

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CORAM : **A. V. NIRGUDE & INDIRA K. JAIN, JJ.**
DATE : **9TH FEBRUARY, 2016.**

**<u>ORAL JUDGMENT (Per A. V. Nirgude, J.) :-</u>**

. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. Petitioner No. 1, a sitting Member of Parliament and petitioner No. 2, son of petitioner No. 1, moved this petition for setting aside criminal complaint lodged against them. We are informed that the police not only took cognizance of the complaint but also finished the investigation. We perused complaint, police papers and affidavit of the Investigating Officer.

. The petitioners are residents of Jamner. Petitioner No. 1 owns a piece of land near forest. It is alleged that, petitioner No.1 created record indicating that he had planted about 1.5 lacs teak wood trees in and around forest land. Thereafter, he created further record that he removed those trees and sold them in open market. He thus showed that he earned income over Rs. 7.00 Crore from the said trees. He then showed this income as agriculture income and sought appropriate relief from Income Tax Department. The Income Tax Department examined his claim and passed certain orders which are not the subject matter of the complaint.

3. Respondent No. 3 complainant alleged that petitioner No. 1 had no occasion to plant 150000 trees, had no occasion to cut those trees and did not sell the trees in open market. It is his allegation that this entire story was invented for creating an impression that the petitioners earned legitimate income of Rs. 7.00 Crore. He alleged that, amount shown to have been earned was not agriculture income of the petitioners from the sale of teakwood trees. He alleged the actual source was not disclosed to the Income Tax Department. In other words, the complainant suggested that this was black money sought to be laundered. To substantiate these allegations, the complainant is trying to show that the petitioners could not have planted 150000 trees in a small plot of land. He tried to show that the forest department too helped the petitioner No. 1 in his scheme by issuing him fictitious gate passes showing that logs of woods were transported away from forest area etc. According to

complainant, these acts amounted to offence punishable independently under the provisions of Indian Penal Code.

4. We find these allegations directly related to Income Tax Department. The petitioners' claim of income of Rs. 7.00 Crore was whether false and fraudulent is for the Income Tax Department to look into it. The Income Tax Department examined this case and came to its own conclusion as to what action they should take against the petitioners. In addition to this, the Department is also entitled to examine whether the petitioners deserve to be prosecuted.

5. We are of the view that, it is only the Income Tax Department which could have initiated prosecution against the petitioners in view of provisions under Sections 277, 277(A) read with Section 279 of the Income Tax Act. This is the only course of action available against the petitioners and independent person like respondent No. 3 has no locus to initiate proceedings against the petitioners. We are therefore inclined to set aside the complaint lodged against the petitioners.

6. Writ Petition is allowed. Rule is made absolute in terms of prayer clause 'C'.

**[ INDIRA K. JAIN ]**
**JUDGE**

**[ A. V. NIRGUDE ]**
**JUDGE**

sgp