

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1276 OF 2016

1. Shaikh Kalimuddin Shaikh Salimuddin,
Age : 47 years, Occu. Business,
M/s Diamond Power Technologies,
PlotNo. 217, Sector-C,
Pnadharpur Bhangar Galli,
Tq. Gangapur, District Aurangabad
2. Shaikh Karim Shaikh Usman,
Age : 47 years, Occu. Service,
Plot No. 12, New Nandanvan Colony,
Nehru Chowk, Chhavani, Aurangabad
3. Shaikh Rafiq Shaikh Ismail,
Age : 37 years, Occu. Service,
Galli No. 2, Samata Nagar,
Aurangabad
4. Zaker Khan Anwar Khan,
Age : 29 years, Occu. Service,
Near Chandmari Mosque,
New Nandanvan Colony, Aurangabad

PETITIONERS

VERSUS

The State of Maharashtra,
through Waluj MIDC Police Station,
Aurangabad

RESPONDENT

Mr. Anand P. Bhandari, Advocate for the Petitioners
Mr. M.M. Nerlikar, A.P.P. for the respondent/State

CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.

DATE : 4th October, 2016

PER COURT :

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

2. The learned counsel for the petitioners submits that even if the allegations in the FIR are taken on their face value and read in entirety thereof, no offence is disclosed. He submits that there are less than ten employees working in the Unit of petitioner No. 1 and therefore, the provisions of the Factories Act are not applicable. Even the police officers are not authorized or have jurisdiction to investigate into the said aspect. It is submitted that even if the allegations in the FIR are taken as they are, at the most, it can be said that the non-cognizable offences are disclosed. By no stretch of imagination, even the offences punishable under Sections 420 and 468 of the Indian Penal Code are disclosed and therefore, the further investigation on the basis of the said FIR will be an abuse of the process of law. In support of his contention that once the non-cognizable offence is disclosed, the police should not register the FIR under

section 154 of the Code of Criminal Procedure, the learned counsel for the petitioners relies on the judgment in the case of ***State of Haryana and others Vs.Ch.Bhajan Lal and others 1990 AIR 1992 SC 604*** and in particular paragraph Nos. 32 and 33 thereof. Relying on the said judgment, the learned counsel submits that the FIR deserves to be quashed.

3. On the other hand, the learned A.P.P. submits that not only the allegations in the FIR attract the cognizable offences against the petitioners but the concerned police officers, during the investigation, have collected the incriminating material which would indicate the alleged commission of the offences by the petitioners.

4. We have given careful consideration to the submissions advanced on behalf of the petitioners and by the learned A.P.P. We have also perused the averments made in the writ petition, the annexures thereto and the allegations in the FIR. Upon reading the allegations in the FIR in their entirety, there is prima facie evidence that the petitioners are selling the batteries by

affixing the stickers of various names and thus, by recycling the old batteries, the forged batteries are sold in the market by cheating the public at large. In that view of the matter and since the investigation is in progress, we are not inclined to entertain this petition. The writ petition, therefore, stands rejected.

[SANGITRAO S. PATIL]
JUDGE

[S.S. SHINDE]
JUDGE

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