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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 566 OF 2015

Mr. Pankaj Shyam Chawla

... Petitioner

Versus

The State of Maharashtra

... Respondent

Smt. Usha Purohit i/by Mr. Rajesh Michandani for the petitioner.

Mr. J.P. Yagnik, A.P.P. For the State.

Mr. M.K. Kocharekar for respondent no. 2.

**CORAM : RANJIT MORE AND
V.L.ACHLIYA, JJ.**

DATED : 5th JANUARY, 2016

P.C. :-

Heard the learned counsel for the respective parties and the learned A.P.P. for the State.

2. The petition is filed by resorting to the provisions under section 482 of the Code of Criminal Procedure and Article 226 of the Constitution of India to quash and set aside the FIR bearing CR No. 327 of 2014 registered with Chembur Police Station at the instance of respondent no. 2 for the offences punishable under sections 420, 465, 467 and 471 of the Indian Penal Code. A copy of the FIR is annexed at Exh. A to the petition. The FIR shows that

the petitioner has forged the deed of cancellation and cheated the respondent no. 2 /original complainant and caused him wrongful loss to the tune of Rs. 50 lac.

3. Learned APP placed on record the report dated 16th October, 2015 submitted by the Senior Police Inspector, Chemur Police Station. The report reveals that the signatures on the disputed document i.e. cancellation deed and the admitted signatures of respondent no.2 complainant were sent to the Handwriting Expert. The report of the handwriting expert was received on 13th October, 2015 and it shows that the admitted signature of respondent no.2 does not tally with his signature on the disputed document namely the cancellation deed. The report further shows that further investigation is in progress.

4. Mrs. Purohit, the learned counsel for the petitioner contended that when the remedy to initiate civil as well as criminal is available to a person, then simultaneously both the remedies cannot be availed. In support of this proposition, she had relied upon the decision of the Supreme Court in the case of **Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums**¹. She also stated that respondent no.2 has already filed a civil suit for declaration and specific performance and the petitioner has

1 (2003) 6 Supreme Court Cases 503

invoked the arbitration clause in MOU.

4. We are unable to accept the submissions. Firstly the decision of the Apex Court in *Hindustan Petroleum Corpn Ltd.* (supra) arose out of the proceedings under section 8 of the Arbitration & Conciliation Act, 1996. Para 23 on which strong reliance is placed by the learned counsel reads as under :

"23. Therefore, in our opinion, the courts below have erred in coming to the conclusion that the appellant did not have the legal authority to investigate and proceed against the respondent for its alleged misconduct under the terms of the Dealership Agreement. We are also of the opinion that if the appellant is satisfied that the respondent is indulging in short-supply or tampering with the seals, it will be entitled to initiate such action as is contemplated under the agreement like suspending or stopping the supply of petroleum products to such erring dealer. If in that process any dispute arises between the appellant and such dealer, the same will have to be referred to arbitration as contemplated under Clause 40 of the Dealership Agreement."

5. The above observations do not support the petitioner's argument. Therefore, the reliance placed on this decision is not helpful to the petitioner. That apart, petitioner contended that the arbitration clause is contained in MOU agreement and the petitioner does not dispute that there is no arbitration clause in the document in question namely the cancellation deed in respect of which forgery is alleged.

6. Taking the totality of the facts and circumstances of the case into consideration, at this stage, we are not inclined to interfere with the investigation which is in progress.

7. It is expressly made clear that the observations made hereinabove are made for the purpose of disposal of this petition and trial Court shall not be influenced by these observations while deciding the proceedings including the discharge application.

(V.L.ACHLIYA, J.)

(RANJIT MORE, J.)