

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.214 OF 2006

1. Usha Suresh Mule,
Age 55 years, Occu. Household,
2. Sanjay Suresh Mule,
Age 29 years, Occu. Service,
3. Manisha Sanjay Mule,
Age 26 years, Occu. Service,

Petitioner Nos.1 to 3
R/o Navchaitanya Housing Society
Flat No.C-45, Saint Dnyaneshwar Nagar,
Morwadi, Mahada, Pimpri, Pune

4. Rekha Jitendra Mudke,
Age 30 years, Occu. Advocate,
5. Jitendra Ashok Mudke,
Age 32 years, Occu. Service,

Petitioner Nos.4 and 5
R/o 725, F-2, Takshashila,
Mahada, Morwadi, Pimpri,
Pune-18.

... **PETITIONERS**

Versus

1. The State of Maharashtra
2. Gorakhnath S/o Dnyandev Thorave,
Age 66 years, Occ. Business,
R/o Kedgaon, Nepti Road,
Near Workshop, Ahmednagar,

... **RESPONDENTS**

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Mr. A.M.Gaikwad, Advocate for Petitioners
Mr. S.J.Salgare, AGP for State.
Mr. S.R.Dheple for Respondent No.2

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**CORAM : T.V.NALAWADE AND
SUNIL K. KOTWAL, JJ.**

DATED : 21st July, 2017

JUDGMENT : (Per Sunil K. Kotwal, J.) :-

1. This petition is filed by original accused in Crime No.212 of 2005, registered at Police Station Ahmednagar, under Sections 420, 406 read with 34 of the Indian Penal Code. Petitioners have filed this petition to quash the chargesheet filed against them on 18.01.2006, before learned Judicial Magistrate (First Class), Ahmednagar registered as RTC No.18 of 2006, by Respondent No.1 / State of Maharashtra. Respondent No.2 is original informant.

2. In brief, the contention of petitioners is that, the petitioner No.1 is widow of deceased Suresh Sadashiv Mule and petitioner Nos.2 and 4 are the son and daughter of Suresh Sadashiv Mule and petitioner No.1. Petitioner No.3 is wife of petitioner No.2 and petitioner No.5 is husband of petitioner No.4. After retirement of Suresh Sadashiv Mule, Chit Fund (*Bhishi*) was run in his house, by some neighbours. Petitioners came to know about this Chit Fund (*Bhishi*) after the suicidal death of Suresh Sadashiv Mule, when his suicidal note was found in the house. As the members of Chit Fund

(*Bhishi*), did not repay the contribution, the deceased Suresh Sadashiv Mule indebted and it compelled him to commit suicide. Out of these two suicidal notes one was addressed to petitioner Nos.2 and 4 and the second was addressed to the then District Superintendent of Police Shri Vishwasrao Nagre. After going through these suicidal notes, petitioner No.1 came to know that, due to the illegal act of neighbours her husband was compelled to commit suicide. Therefore, she approached Kotwali Police Station to register offence against the persons, responsible for the suicidal death of her husband. However, concerned Police Officer did not take any action. Therefore, petitioners approached District Superintendent of Police for taking action against those culprits. The office of District Superintendent of Police directed the petitioners to again approach Police Station. Therefore, on 08.10.2005 petitioner No.1 approached Police Station Kotwali. However, she was arrested by police and that time, she came to know that one member of Chit Fund (*Bhishi*), namely, Gorakhnath Dnyandeo Thorave (Respondent No.2) lodged a complaint against the petitioner and her family members that they cheated him and other persons.

3. Petitioner No.1 obtained bail from learned Judicial Magistrate (First Class) and petitioner Nos.2 to 5 obtained anticipatory

bail from Additional Sessions Court, Ahmednagar. Petitioners are nowhere related with the Chit Fund (*Bhishi*) run by their neighbours in the house of Suresh Sadashiv Mule. No material is available against the petitioners, which indicates that they have committed any criminal offence. Therefore, petitioners have approached this Court for appropriate relief.

4. Heard learned Advocate for the petitioners, learned AGP for Respondent No.1 and learned Advocate for Respondent No.2. Learned Advocate for the petitioners argued in the line of contents of the petition. In brief, his contention is that, none of the petitioners is in way connected with the so called Chit Fund (*Bhishi*) and therefore, no offence is made out against any petitioner. He also pointed out that since last two years petitioner Nos.2 to 5 live at Pune for their respective services and occupation. Marriages of petitioner Nos.2 and 4 are solemnized in the year 2004 and 1999 respectively. Petitioner Nos.4 and 5 stay at Pune since their marriage.

5. On the other hand, learned APP for the State placed reliance on some recitals of suicidal note, wherein deceased Suresh Sadashiv Mule has admitted running of Chit Fund (*Bhishi*) in his house. He pointed out that during investigation by police, some material is found against the petitioners. They promised to repay the

outstanding amount to the members of Chit Fund (*Bhishi*) when Suresh Sadashiv Mule was admitted in the hospital after consumption of poison.

6. I have gone through the copy of F.I.R. Dated 07.10.2005 lodged by Gorakhnath Dnyandeo Thorave, who contended that, amount of Rs.1,74,000/- is outstanding from Suresh Sadashiv Mule and his wife. Though he claims that, even petitioner Nos.2 to 5 are responsible for that amount because they promised to pay that amount in the hospital, such contention is not acceptable. The simple reason for this is that even assuming that when Suresh Sadashiv Mule was admitted in the hospital and at that occasion the relatives of Suresh Sadashiv Mule promised to pay the outstanding amount from Suresh Sadashiv Mule to some third persons, it does not mean that, the relatives of Suresh Sadashiv Mule were involved in the scheme of Chit Fund (*Bhishi*). Otherwise also, after going through the statements of the witnesses recorded by Investigating Officer, it emerges that, nobody has whispered a single word regarding payment of any amount to petitioner Nos.2 to 5. However, the papers of investigation by police in the case show that some oral statements are available to involve the petitioner No.1 as one of the organizer of Chit Fund (*Bhishi*) along with Suresh Sadashiv Mule. Even in the suicidal note relied by petitioner, it is mentioned by the deceased Suresh

Sadashiv Mule that his wife (petitioner) would repay the outstanding amount to the concerned persons. Therefore, at this stage it cannot be said that no substance is available against the petitioner No.1.

7. However, as observed above no material is placed on record to show that, petitioner Nos.2 to 5 are connected with the so called Chit Fund (*Bhishi*) scheme run by deceased Suresh Sadashiv Mule. Therefore, the prosecution of petitioner Nos.2 to 5 deserves to be quashed by invoking inherent powers of this Court under Section 482 of the Criminal Procedure Code. However, so far as claim of the petitioner No.1 is concerned her prayer for quashment of criminal proceedings against her cannot be allowed. In other words, this Writ Petition deserves to be partly allowed. Hence, following order.

ORDER

1. Petition is partly allowed.
2. Criminal Proceeding pending before Judicial Magistrate (First Class), Ahmednagar, against petitioner Nos.2 to 5 i.e. RTC No.18 of 2006, in connection with Crime No.212/05 registered at Kotwali Police Station, Ahmednagar, is quashed.

3. Prayer of the petitioner No.1 to quash the criminal proceeding against her in RTC No.18 of 2006 is rejected. RTC No.18 of 2006 to proceed further only against petitioner No.1 in accordance with law.

(SUNIL K. KOTWAL, J.)

(T.V.NALAWADE, J.)

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