IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1142 OF 2016

1. Mr. Rajesh Sud,
Age 46 years,
Occu : Managing Director & CEO,
Max Life Insurance Co. Ltd.,
11th Floor, DLF Square,
Jacaranda Marg, DLF City,
Phase-II, Gurgaon-122002.

2. Mr. Analjit Singh,
Age 62 years,
Occu : Founder and Chairman Emeritus,
Max Life Insurance Co. Ltd.,
11th Floor, DLF Square,
Jacaranda Marg, DLF City,
Phase-II, Gurgaon-122002.

3. Mr. Rajit Mehta,
Age 54 years, Occu : Director,
Max Life Insurance Co. Ltd.,
11th Floor, DLF Square,
Jacaranda Marg, DLF City,
Phase-II, Gurgaon-122002. ... **Petitioners**

Versus

1. The State of Maharashtra.

2. Sapankumar P. Satyanarayan Rathi,
Age 31 years,
R/o New Bazaar, Jalna,
Tah. & Dist. Jalna. ... **Respondents**

WITH

CRIMINAL WRIT PETITION NO.1368 OF 2016

1. Mr. Rajan Kalia,
Co-Founder, Salto Dee Fe,
C 220, Nirvana Courtyard,
Nirvana Country,
South City 2,
Gurgaon-122018.

2. Ms. Marielle Theron,
R/o Switzerland,
Age 54 years, Occu : Director,
Max Life Insurance Co. Ltd.,
11th Floor, DLF Square,
Jacaranda Marg, DLF City,
Phase-II, Gurgaon-122002.

3. Mr. Rajesh Khanna,
Age 55 years, Occu : Director,
Max Life Insurance Co. Ltd.,
11th Floor, DLF Square,
Jacaranda Marg, DLF City,
Phase-II, Gurgaon-122002.

4. Mr. Anuroop Singh,
Age 62 years, Occu : Ex-Vice Chairman,
Max Life Insurance Co. Ltd.,
R/o W-74, Greater Kailash-1,
Delhi. ... **Petitioners**

Versus

1. The State of Maharashtra.

2. Sapankumar P. Satyanarayan Rathi,
Age 31 years,
R/o New Bazaar, Jalna,
Tah. & Dist. Jalna. ... **Respondents**

...

Mr. Sanjay Kumar a/w Mr. Amit A.Yadkikar, Mr. Soham Kumar, Mr. Shyam Jawale, Mr. Ashish Manglani - Advocates for Petitioners.
Mr. V.M.Kagne, APP for Respondent No.1 – State.
Respondent No.2 – Mr. Sapankumar – in person.
Mr. Dr. S.D.Tawshikar, Advocate as Amicus Curiae.

...

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

RESERVED ON : 15th November, 2017
PRONOUNCED ON : 05th December, 2017

JUDGMENT : (Per Mangesh S. Patil, J.) **:-**

Rule. The Rule is made returnable forthwith. Heard finally with the consent of learned Advocates for the Petitioners, learned APP for Respondent-State. Respondent No.2 in person and the learned amicus curiae.

2. These are the Writ Petitions filed under Articles 226 and 227 of the Constitution of India praying to quash and set aside one and the same order passed by the learned Chief Judicial Magistrate, Jalna (hereinafter referred to as 'CJM') dated 27.07.2016 in Criminal Miscellaneous Application No.151 of 2010, directing

investigation under section 156(3) of the Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.') and also to quash and set aside the FIR registered with Sadarbazar Police Station, District Jalna on 08.08.2016 pursuant to such order and registered for the offences punishable under Sections 406, 420, 464, 469, 470, 471, 504, 506, 323 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC') and the offences added subsequently punishable under Sections 191, 193, 195, 196, 197, 499, 500, 501 of the IPC. Since Respondent No.2 in both these petitions is the original complainant at whose instance the impugned order was passed and the FIR has been registered against the persons holding the post in the Management of the same Company, we propose to dispose of these Writ Petitions by this common judgment.

3. In Criminal Writ Petition No.1142 of 2016, petitioner No.1 is the Managing Director and the Chief Executive Officer of the Max Life Insurance Co. Ltd. (hereinafter referred to as 'Company'). Petitioner No.2 therein is the Founder and presently the Chairman

Emeritus of the Company. Petitioner No.3 therein is the Executive Director of that Company. Whereas in Criminal Writ Petition No.1368 of 2016, Petitioner No.1 is the Ex-Head of the Human Resource Department, Respondent No.2 is the Independent Director and Petitioner No.3 is the Director of the same Company.

4. Shorn of details the facts leading to the filing of these Writ Petitions can be summed up as under :

Respondent No.2 was appointed as 'Manager Sales' in Band 4 in the Company with effect from 13.09.2008. Lastly, he was posted at Jalna. Since there was some dispute about his performance and behaviour, by the letter dated 15.05.2009, it was informed to him that his services stood terminated with immediate effect. By another letter dated 21.05.2009, which was styled as 'Relieving letter', it was informed to him as under :

> *"With reference to your letter of resignation dated May 21, 2009 this is to inform you that your resignation has been accepted.*
>
> *You will be relieved from the services of the Company at the close of business hours of May 21, 2009.*
>
> *On behalf of MNYL, I wish you all the best for your future endeavors*

Regards."

5. Apparently, Respondent No.2 was shocked since he had not tendered any resignation as mentioned in the letter dated 21.05.2009 (Exh-I). The partner, Operation Head of the Company by name Mr. Rajesh Ramavatar Dubey lodged a complaint with Sadarbazar Police on 08.06.2009 alleging that Respondent No.2, inspite of having been terminated from the employment by the company, was coming and trying to forcefully enter the office regularly and was also giving threats on phone. Pursuant there to, an offence was registered under Sections 504 and 506 of the IPC. On 11.06.2009, Respondent No.2 also lodged a complaint Exh-K to the same Police Station alleging that Rajesh Ramavatar Dubey had orally informed him about he having been removed from the employment. But his dues were not cleared and when he tried to reach him, the watchman at the office abused and drove him out.

6. Later on Respondent No.2 served a notice addressed to Mr. Rajan Kaliya, Executive Vice President

and Head Human resource and Mr. Rajesh Ramavatar Dubey Office Head (Partner) dated 08.07.2009 (Exh-M) through his Advocate Mr. R.C. Saboo alleging that the services of Respondent No.2 were terminated illegally and that all his dues were not cleared, he was not allowed to enter the office from 21.05.2009, that it was falsely mentioned in the earlier correspondence about he having resigned from the job when he had not and that a cheque for Rs.83,385.34/- was sent to him as full and final payment. It was also mentioned that a balance amount which was due to Respondent No.2 till 20.06.2009 amounting to Rs.65,810/- should be cleared in 8 days of the notice.

7. There was further correspondence between the parties i.e. the company on the one hand and Respondent No.2 on the other hand. The bitterness increased and finally Respondent No.2 filed Miscellaneous Application No.151 of 2010 against the present petitioners as also Mr. Rajesh Ramavatar Dubey and few other Directors of the company who are not

before us. After repeating the above facts it is alleged in this complaint that he had not resigned from the job and he was terminated illegally by preparing false documents. He was abused and restrained from coming to the office. Some other allegations were also made against Mr. Rajesh Ramavatar Dubey to which we are presently not concerned since he is also not before us. Respondent No.2 supported his allegations with an affidavit. After going through the affidavit and the contents of the application, by the order dated 01.04.2010, the learned CJM issued a direction under Section 156(3) of the Cr.P.C. to the P.I. of Sadarbazar Police Station either to submit charge-sheet or to submit report on or before 22.04.2010.

8. It is necessary to note that this order passed by the learned CJM was challenged before this Court and the learned Single Judge by his judgment and order dated 31.03.2016 in Criminal Writ Petition No.437 of 2010 and Criminal Writ Petition No.505 of 2010 set aside the order of the learned CJM and directed the learned

CJM to pass the order afresh after hearing the complainant, since the order suffered from non-application of mind. Pursuant to such direction, the learned CJM by the impugned order once again directed the matter to be investigated by invoking the power under Section 156(3) of Cr.P.C. This is how these Writ Petitions have been filed impugning the order dated 27.07.2016 and the FIR registered in pursuance thereof.

9. We have heard the learned Advocate for the petitioners, Respondent No.2 in person and the learned APP. We have also heard Advocate Mr. Tawshikar, who has been appointed as an amicus curiae.

10. According to the learned Advocate for the petitioners, a purely civil dispute resulting from termination of employment of Respondent No.2 is illegally being brought under criminal law. Even going by the facts which are broadly admitted, a mistaken reference in the relieving letter dated 21.05.2009 wherein apparently out of human error word

'resignation' was used, has been tried to be made capital of, to pressurize the company and its officials to recover alleged dues. There is absolutely no criminality involved. The allegations are inherently improbable. Even if they are accepted at their face value, they do not constitute necessary ingredients of the offences registered against these petitioners. The allegations in the complaint qua the petitioners are vague and general in nature. The complaint has been lodged to wreck vengeance and is prompted by mala fides of Respondent No.2. It would be sheer abuse of the process of law if the petitioners who are not even remotely connected with the alleged offences are made to face the trial. The petitioners who are directors and have no control over the day-to-day affairs of the office of the company at Jalna cannot be fastened with criminal liability vicariously.

11. The learned advocate for the petitioners also cited catena of decisions in support of his various arguments. He particularly referred to the decisions in the cases as mentioned in the list as follows :

(a) State of Haryana and others Vs. Bhajan Lal and others [1992 Supp (1) SCC 335].

(b) Pepsi Foods Ltd. And another Vs. Special Judicial Magistrate and others [(1998) 5 SCC 749].

(c) Madhav Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre [(1988) 2 SCC 692].

(d) V.Y.Jose and another Vs State of Gujarat and another [(2009) 3 SCC 78].

(e) Indian Oil Corpn. Vs. NEPC India Ltd. [(2006) 6 SCC 736].

(f) G. Sagar Suri Vs State of UP [(2000) 2 SCC 636]

(g) Maksud Saiyed Vs State of Gujarat and others [(2008) 5 SCC 668].

(h) Thermax Ltd and others Vs. KM Johny [(2011) 13 SCC 412].

(i) S.K. Alagh Vs. State of U.P. and others [(2008) 5 SCC 662].

(j) Union of India Vs. Purnandu Biswas [(2005) 12 SCC 576].

(k) S.P. Chengalvaraya Naidu Vs. Jagannath [(1994) 1 SCC 1].

(l) K.S.Bhatnagar Vs. State and others [2015 SCC

online DEL 8188].

(m) Manoj Kumar Sharma Vs. State of Chhattisgarh [(2016) 9 SCC 1].

(n) Thulia Kali Vs. The State of Tamil Nadu [(1972) 3 SCC 393].

(o) Mahommed Ibrahim and others Vs. State of Bihar and another [(2009) 8 SCC 751].

(p) Rajiv Thapar and others Vs. Madan Lal Kapoor [(2013) 3 SCC 330].

(q) Rajiv Thappar Vs. Madan Lal Kapoor [(2013) 3 SCC 330].

(r) All Cargo Movers (India) (P) Ltd. Vs. Dhanesh Badarmal Jain [(2007) 14 SCC 776].

12. Respondent No.2 in person repeated the allegations levelled against the petitioners by taking us through the contents of the complaint and harped upon the fact that even without there being any resignation tendered by him, attempt has been made to blemish him of tendering resignation to avoid payment of all legitimate dues. Thus according to him, the learned CJM, having passed the impugned order after scanning

all the material on the record, it may not be interfered with.

13. It is necessary to note at the inception that the powers of this Court to quash FIR have been crystalized by various judgments of the Supreme Court and the High Court and the decision in the case of Bhajan Lal (supra) has been followed as a Bench mark though it has been made clear that the instances for quashing enlisted therein in paragraph No.108 are not exhaustive. The observations to our mind are guiding factors and we deem it proper to follow them as indeed we are bound by. The observations read thus :

> "108] In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines of rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> **1]** Where the allegations made in the First

Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2] Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3] Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4] Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

5] Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6] Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7] Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

14. It is also necessary to note that no objection has

been raised on behalf of the Respondents as to the powers of the High Court to quash a criminal proceeding by invoking the powers under Articles 226 and 227 of the Constitution of India and Section 482 of the Cr.P.C., even without seeking a remedy of appeal or revision. In other words no objection has been raised that the petitions are not maintainable since an efficacious remedy is available of preferring a revision under Section 397 of the Cr.P.C. against the impugned order. Therefore, we can safely proceed to decide the matters on merit.

15. A careful reading of the complaint lodged by Respondent No.2 reveals that after narrating the facts as to how he was appointed in the company it is alleged that Accused No.4 therein i.e. Mr. Rajesh Ramavatar Dubey was his superior in the office at Jalna. Mr. Dubey, in collusion with other employees, started harassing him. He had not resigned. The accused had not followed any legal procedure before terminating him. It is alleged that the accused without any reason started

mentally harassing him. Accused No.4 (Mr. Dubey) pressurized him to execute certain writings and at the instance of all the accused, Accused No.4 (Mr. Dubey) prepared false reports and by misusing his post, physically and mentally harassed him. The other accused without conducting any verification of the facts and by accepting whatever was being informed to them by Mr. Dubey to be true indirectly instigated him. When he sent letter to accused Nos.1 to 3 informing them about the harassment being meted out to him, they ignored it. As a result, Accused No.4 (Mr. Dubey) continued to harass him more. Accused Nos.1 to 3 and 5 to 12 (which include the present petitioners) are the directors of the Company and consequently all the Officers and the Managers are following the directions of these directors. Relying upon the appointment letter issued to him, he had joined the employment. It is also alleged that Accused No.4, Mr. Dubey was envying him and with the aid of rest of the accused harassed him persistently and finally accused No.4 did not allow him to work when he went to the office on 21.05.2009 at

9.30 a.m. It is alleged that Accused No.4, Mr. Dubey told him orally that on the instructions of accused nos.1 to 3 he was terminated from the employment. Respondent No.2 has then referred to the subsequent correspondence, issuance of legal notices.

16. We are referring to all these contents in detail to ascertain as to if all the necessary ingredients for constituting the offences or any of them are discernible. We are alive that the FIR is not an encyclopedia and may not come out with all the details. However, going by the facts in the matter in hand, we do not see as to what else could have been incorporated in the complaint other than what has been mentioned therein. Therefore, what we find from the averments in the complaint that a very broad and vague statements have been made against the rest of the accused and particularly the petitioners herein. Primarily, the allegations have been levelled against the Accused No.4 (Mr. Dubey) alone and it has been only vaguely mentioned that Accused No.4 (Mr. Dubey) was acting at

the instance of the rest of the accused. We are unable to comprehend as to how Respondent No.2 who was serving in the office of the Company at Jalna could have been so important for the company that all the Directors of the Company, who hail from distant places would consider him to be of such importance that they would even try to terminate him by personally looking into the matter. As has been rightly submitted by the learned Advocate for the Petitioners, the concept of vicarious liability is unknown to criminal liability. When there are no specific allegations attributed to any of the petitioners which would even remotely suggest of any criminal activity, the petitioners cannot be fastened with such a criminal liability when they have had no role or involvement.

17. The very emphasis of the allegations levelled by Respondent No.2 which are germane to this dispute is the reference in the 'Relieving letter' dated 21.05.2009 that his resignation was being accepted, when he had not tendered any such resignation. It is apparent that

this letter which we have reproduced herein before does mention that Respondent No.2 had tendered a resignation and when even according to the petitioners, no such resignation was tendered and it was a sheer mistake committed by the concerned person in writing the contents in this manner. We, therefore, deem it necessary to consider this aspect of the matter which indeed is crucial and decisive.

18. It is apparent that in this letter subject has been written as 'Relieving letter' and it is thereafter in the contents it has been mentioned that resignation has been accepted. It is apparent that if it was supposed to be a relieving letter, there could not have been logically any question of communication of acceptance of the resignation. Therefore, to our mind it seems to be clearly a human error.

19. There is another aspect of the matter to which we must refer and which clinchingly points out that Respondent No.2 was also aware that it was only

mistake. In response to such relieving letter (Exh-I), dated 21.05.2009, when Respondent No.2 lodged a written complaint (Exh-K) with the P.I. of Sadarbazar Police Station, Jalna on 11.06.2009, he did not conspicuously mention about any resignation and only mentioned in the complaint that on 21.05.2009 Mr. Rajesh Ramavatar Dubey, Branch Manager had orally informed him that he was removed from the job. Again, according to Respondent No.2, along with letter dated 21.05.2009 a cheque for an amount of Rs.83,385.34/- was paid to him towards full and final settlement. It is thereafter that Respondent No.2 sent a letter dated 08.07.2009 (Exh-M) through his advocate Mr. Saboo and addressed to Mr. Rajan Kalia, Executive Vice President and Head Human Resource and Mr. Rajesh Dubey, Office Head Partner. Even in this letter, it was alleged that the services of Respondent No.2 were terminated illegally and Mr. Dubey was not allowing him to work, to enter the premises and with an intention to harass and defame Respondent No.2 Mr. Dubey had lodged a false complaint with police. Even there is a reference in this letter about Respondent No.2 having received the notice on 22.05.2009 from Mr. Anurag Bhartiya, Senior Vice President Human Resource, which is nothing but the letter (Exh-H), dated 15.05.2009 whereby services of Respondent No.2 were terminated. Pertinently even it has been questioned in this letter as to how without there being any resignation tendered by Respondent No.2 it was being informed in that manner. It is thus quite clear that since inception Respondent No.2 has been aware that reference to resignation in the relieving letter was a sheer mistake and he was in writing informed that his services were being terminated and even according to him, Mr. Dubey had also orally informed him that his services were terminated.

20. If such is the state of affairs, we are unable to apprehend as to what else was there to constitute making of a false documents or forgery. There are absolutely no allegations about there being any other instance of forgery indulged into by the accused named in the complaint and the impugned FIR.

21. We now deem it appropriate to refer to another important circumstance which would demonstrate the intention of Respondent No.2 in lodging the complaint, which to our considered view speaks in volumes about the complaint having been engineered to wreck vengeance. Admittedly, Respondent No.2 through his Advocate Mr. Saboo had repeatedly issued letters / notices and also issued a publication in a newspaper. Similarly, even Respondent No.2 himself personally lodged a complaint on 11.06.2009 with the P.I. of the Sadarbazar Police Station and followed it up by lodging similar subsequent complaint. In the initial complaint (Exh-K) lodged on 11.06.2009, he has conspicuously mentioned only about he having been terminated from the employment and his dues were not being paid and that he was not allowed to enter the office and was driven out. Then in the first letter sent through Advocate Mr. Saboo dated 08.07.2009 a grievance is only made about such wrongful termination and no resignation have been tendered and that the company was liable to pay the balance amount of his dues

amounting to Rs.65,810/-. By the reply dated 31.07.2009 to the letter of Advocate Mr. Saboo, it was inter alia informed that it was a sheer typographical error in mentioning that the resignation was accepted in the relieving letter dated 21.05.2009. There was no question of any compulsion to tender any resignation and the services of Respondent No.2 were terminated. Advocate Mr. Saboo again sent another letter dated 01.09.2009 on behalf of Respondent No.2 and even in this complaint the allegations were repeated by saying that the termination was illegal and the company should clear his dues. Later on, Respondent No.2 lodged a complaint with CJM, Jalna bearing S.T.C.No.1764 of 2016 on 16.11.2009 against Mr. Rajesh Ramavatar Dubey alleging that Mr. Dubey had abused and threatened him. Repeating the allegations that Mr. Dubey was preventing him from entering the office and was harassing him and that since last six months he was not allowed to come to the office on the ground that his services were terminated. It is then alleged that Mr. Dubey abused and beaten him and threatened of consequences. We are pointing out these circumstances to show that in none of these complaints Respondent No.2 had even remotely alleged about the present petitioners having indulged in any criminal activity. Even he had not alleged that any forgery was committed even by Mr. Dubey. In all probabilities, if at all there would have been such a forgery or other acts involving criminality, the Respondent No.2 would not have hesitated even for a moment to make allegations against them.

22. Similarly, even in a subsequent complaint (Exh-W) lodged with Sadarbazar police on 03.02.2010, after a lapse of almost 9 months he had simply alleged that on 21.05.2009 at the instance of Accused Nos.1 to 3 therein i.e. Analjit Sing, Rajesh Sud and Rajan Kalia, accused No.4 Mr. Rajesh Dubey had abused him and by informing him orally about his services having been terminated he was not allowed to enter into office. It was also alleged that a false complaint was lodged against him and inspite of repeated notices issued through his

lawyer his dues were not cleared. Again, even in this complaint no allegations have been levelled constituting any offence like forgery using a forged document. The role of rest of the accused, which is attributed to them is that they had directed Accused No.4, not to allow Respondent No.2 to work.

23. The fore going circumstances referred to herein above clearly show that even if the contents of the complaint are taken at their face value, no offences can be made out against the petitioners. The contents are inherently improbable. The allegations are prompted by mala fides and it would be a sheer exercise in futility if the petitioners are allowed to face the prosecution / trial in such set of facts. Thus, the instant case, in our view is duly covered by the directions in the case of Bhajan Lal (supra). The learned CJM has apparently committed a gross error in not appreciating all the afore mentioned facts and circumstances in their proper perspective and has passed the order directing investigation under Section 156(3) of the Cr.P.C. by the impugned order

which is not sustainable in law.

24. As has been rightly submitted by the learned Advocate for the Petitioners, a pure Civil dispute touching termination of the employment of Respondent No.2 has been attempted to be blown out of proportion and a lame attempt is made to bring it in the purview of criminal law. It would be sheer abuse of the process of the law if we do not intervene by quashing the impugned order and the FIR.

25. In the result, both the Writ Petitions succeed and are allowed. The impugned FIR is quashed and set aside to the extent of the present petitioners only. The rule is made absolute accordingly.

(MANGESH S. PATIL, J.) **(S.S.SHINDE, J.)**

...

vmk/-