

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1238 OF 2015

Rajendra Bhurabhai Patel : Petitioner.
Versus
The State of Maharashtra and anr. : Respondents.

Mr. Subhash Jha i/by Law Global for the Petitioner.
Mrs. S D Shinde, APP for the Respondent No.1/State.
Mr. I A Shaikh for the Respondent No.2.
Mr. P J Das for the Respondent No.3.

**CORAM : R. M. SAVANT &
SANDEEP K. SHINDE, JJ.**
DATE : 14th AUGUST 2017

P.C.

1 The writ jurisdiction of this court is invoked for quashing and setting the proceedings arising out of the FIR being MECR No.1/2014. The said proceedings have arisen on account of a private complaint lodged by the Respondent No.2 herein who is the nephew of the Petitioner.

2 The gravamen of the allegations against the Petitioner is as regards the transfer of a shop in a complex which has been developed under the aegis of the City and Industrial Development Corporation ("CIDCO" for short). The said shop has been transferred to the name of the Petitioner in the life time of the brother of the Petitioner i.e. the father of the Respondent No.2. The offences alleged are under Sections 420, 468, 423, 464, 466, 467, 463 and 471 of the Indian Penal Code. The Petitioner had earlier filed a Criminal Writ

Petition in the Court being Criminal Writ Petition No.2052 of 2014. The learned counsel appearing for the Petitioner in the said Writ Petition had sought withdrawal of the said Writ Petition with liberty to file a fresh Petition challenging the charge-sheet or file application for discharge before the Trial Court. It is relying upon the said order dated 19/11/2014 that the instant Criminal Writ Petition has been filed.

3 The learned counsel appearing on behalf of the Petitioner Shri Subhash Jha having regard to the directions issued by the learned Magistrate to investigate the crime by order dated 10/02/2014 seeks to rely upon the judgment of a Division Bench of this Court in **Criminal Writ Petition No.3123 of 2014** in the matter of **Nirmal Bang Securities Pvt. Ltd. v/s. State of Maharashtra and ors.** and especially the guidelines mentioned in paragraph 9 thereof. It is the submission of the learned counsel for the Petitioner that in passing the said order the said guidelines have not been complied with by the learned Magistrate. The learned counsel for the Petitioner also sought to draw our attention to the charge-sheet and the material which is annexed thereto so as to contend that there is no case to proceed against the Petitioner. It was the submission of the learned counsel for the Petitioner that the investigation be directed to be carried out by some other investigating agency.

4 It is not possible to accept the aforesaid contentions urged on

behalf of the Petitioner. In so far as the first contention is concerned, the said contention is no more available to the Petitioner in view of the order dated 19/11/2014 which records the statement made on behalf of the Petitioner. In so far as the second contention is concerned, it is not possible for us to weigh and sift the evidence which has been placed on record pursuant to the charge-sheet which has been filed. In so far as the 3rd contention is concerned, the Petitioner would be at liberty to avail of the statutory remedies, if so advised having regard to the fact that the charge-sheet has already been filed. In so far as the next relief which is sought, the same cannot be granted in view of the fact that the investigating agency has already completed the investigation and filed the charge-sheet and therefore the prayer for transferring the investigation cannot be acceded to.

5 The learned counsel for the Petitioner also sought to contend that there is no averment in the complaint that the Petitioner has made a complaint to the police and no cognizance has been taken. In support of the said contention, reliance is sought to be placed on the Full Bench Judgment of this Court reported in 2010(1) Mh.LJ 421 in the matter of Panchabhai Popotbhai Butani and others v/s. State of Maharashtra and ors. The said contention is controverted by the learned counsel for the Respondent No.2 Shri I A Shaikh by referring to the averments made in paragraph 14 of the complaint. In our view, in view of the order dated 19/11/2014 passed in the earlier Writ

Petition, the said contention cannot be accepted.

5 In that view of the matter no relief can be granted to the Petitioner in the above Criminal Writ Petition. The above Criminal Writ Petition is accordingly dismissed. However, the statutory remedies of the Petitioner are kept open for being invoked at the appropriate stage.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]