IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.

Criminal Writ Petition No. 01539 of 2018

District : Jalgaon

Anjali Anish Damania, Age 49 years, R/o. Fifth Floor, Vijayshree Durga, 6th Road, Santacruz (East), Mumbai - 400 055.	.. Petitioner.

versus

1. The State of Maharashtra, Through its Chief Secretary, Home Department, Centre No.1, WTC, 30th Floor, Cuff Parade, Mumbai - 400 001. 2. Muktainagar Police Station, Through its Sr. Police Inspector, Near Tahasil Office, Muktainagar, Jalgaon - 425 306. 3. Eknath Khadse, M. Past Khothali, Muktainagar, Jalgaon - 425 306.	.. Respondents.

....

Petitioner appearing as party in person.

Mr. A.B. Girase, Public Prosecutor, for respondents no.01 and 02.

Mr. V.J. Dixit, Senior Advocate, with Mr. S.V. Dixit, Advocate, for respondent no.03.

....

With

Criminal Application No. 01906 of 2018

District : Jalgaon

1. Anjali Anish Damania,
Age : 49 years,
Occupation : Social Activities,
Fifth Floor,
Vijayshree Durga,
6th Road, Santacruz (East),
Mumbai - 400 055.

.. Applicant no.01 deleted.

2. Roshni Ramakant Raut,
Age : 40 years,
Occupation : Social Activities,
202, Kartik Villa CHS Ltd.,
New Service Road,
Kharegaon, Kalwa,
Dist. Thane.

3. Gajanan Pundlik Malpure,
Age : 48 years,
Occupation : Business and Agril.,
5, Snehil Apartment,
9, Yeshwant Colony,
Ring road, Jalgaon - 425 001.

4. Sushant Parshuram Kurhade,
Age : 25 years,
Occupation : Education,
G 1902, Sukhakarta CHS,
Currey Road (East),
Mumbai - 400 012.

5. Sadashiv Venkat Subramaniam,
Age : 74 years,
Occupation : Engineer,
B-1703, Neel Siddhi Towers,
Sector 12, Vashi,
Navi Mumbai - 400 703.

... Contd.

6. Charmaine Ferns,
Age : 61 years,
Occupation : Social Activities,
Sunswept 'A' 104,
Lokhandwalla Complex,
Andheri (West),
Mumbai - 400 053. .. Applicants.

versus

1. The State of Maharashtra,
Through its Chief Secretary,
Home Department,
Centre No.1, WTC,
30th Floor, Cuff Parade,
Mumbai - 400 001.

2. Muktainagar Police Station,
Through its Sr. Police Inspector,
Near Tahasil Office,
Muktainagar,
Dist. Jalgaon - 425 306.

3. Eknathrao Ganpatrao Khadse,
Age : 63 years,
Occupation : Ex-Minister,
M. Past Khothali,
Muktainagar,
Dist. Jalgaon - 425 306. .. Respondents.

....

Applicant no.01 deleted as per Court's order dated 22.10.2018.

Mr. Vijay B. Patil, Advocate, for applicants no.02 to 06.

Mr. A.B. Girase, Public Prosecutor, for respondents no.01 and 02.

Mr. V.J. Dixit, Senior Advocate, with Mr. S.V. Dixit, Advocate, for respondent no.03.

....

CORAM : T.V. NALAWADE &
SMT. VIBHA KANKANWADI,JJ.

DATE : 19TH NOVEMBER 2018

JUDGMENT *[Per Smt. Vibha Kankanwadi, J.]* :

01. Rule. Rule made returnable forthwith. By consent, heard finally.

02. Both, petition as well as application are filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973, to quash and set aside the first information report vide C.R. No. 116 of 2018, registered with Muktainagar Police Station, District Jalgaon, for offences punishable under Section 379, 380, 420, 465, 466, 467, 468, 469, 471, 474, 120B, read with Section 34 of the Indian Penal Code.

03. It will not be out of place to mention here that, in Criminal Application No. 1906 of 2018, applicant no.01 was party but later on she decided to argue the matter herself and, therefore, by taking necessary permission, she has filed separate proceedings viz. Criminal Writ Petition No. 1539 of 2018. She intends to invoke the powers of this Court under Article 226 of the Constitution of India as well as powers of this Court under Section 482 of the Code of Criminal Procedure. However, the prayer is same and, therefore, for the convenience, petition as

well as application are decided together. Parties who want to get the FIR quashed are addressed as applicants.

04. The applicants have come with a case that, the applicant in criminal writ petition no. 1539 of 2018 is anti-corruption activist. She has filed detail public interest litigation before this Court at principal seat against corrupt politicians and elected members of legislature and cognizance of the said litigations have been taken.

05. Other applicants in criminal application no. 1906 of 2018 are social activists and members of non-political organization called '*Voice of Indian Tax Payers*' and applicant no.03 is member of Shivsena political party. It has been alleged that the aforesaid FIR vide C.R. No. 116 of 2018 came to be registered against them at Muktainagar Police Station on the basis of FIR lodged by present respondent no.03. It is alleged that the applicants had stolen demand drafts and the stamps and thereby committed forgery. Applicant no.01 says that she came across various documents and land records which showed that the respondent no.03, who is an elected politician and then Minister in the Government of Maharashtra, had amassed huge properties and assets in his name and in the name of his family members which is stated to be beyond his valid, legal and known source of

income. She had taken up the cause and had also resorted to hunger strike seeking investigation in respect of disproportionate assets of respondent no.03. Thereafter, the Government of Maharashtra had taken cognizance and respondent no.03 was made to resign on 04.06.2016. Applicants no.01 and 02 had approached Governor of Maharashtra seeking independent investigation into the irregularities. She has also filed several complaints with the investigation agency. After exhausting all legal remedies, she approached this Court by filing PIL No. 03 of 2017. She had annexed copies of two demand drafts bearing nos. 760596 and 06523. The said petition was considered and certain orders have been passed.

06. Now, it is stated in the complaint that the applicant has stolen and forged the demand drafts. It is stated that she had received the photo-copies of the demand drafts from some people who were the depositors of the Bank and aggrieved by siphoning of money from Chopda Urban Co-operative Bank and sister concern Tapi Sahakari Patpedhi. Those institutions were controlled by one Dr. Suresh Borole who was the then father-in-law of daughter of respondent no.03. When she made prayer for investigation on the basis of the photo-copies, a revengeful attitude has been opted by respondent no.03 by filing the FIR. Respondent no.03 had written a letter to Manager,

Administrator, Chopda Urban Co-operative Bank and Axis Bank, Jalgaon, on 03.01.2017, attaching copies of the demand drafts and the Banks had sent reply stating that government administrator has taken control over the management of the bank since 27.09.2010 and the employees had taken away the documents. They have stated that the demand drafts were not issued by them. It was stated to be issued by one Sharad Ramkrishna Wankhede, Kishore Laxman Uttarde and Yogesh Kashinath Barhate. Thereafter, respondent no.03 gave a letter on 18.01.2017 to District Superintendent of Police, Jalgaon, stating that some unknown caller gave him message that there are two demand drafts in the post box outside his residence which could be misused. He found photo-copies of two demand drafts, one was amounting to Rs. 10,00,000 and other was Rs. 9,50,00,000/-. He had requested the police to investigate. It is stated that by doing so, respondent no.03 had misguided the police as he was already having the possession of demand drafts before 03.01.2017. The District Superintendent of Police vide his letter stated that the signatures on the demand drafts were correct but the officers claimed that they have not given such demand drafts in the name of respondent no.03. It was stated by the Bank that, some signed demand drafts were kept in the bank for the sake of convenience and somebody has stolen it. It is also stated that even after litigation in 2010, the administrator had not destroyed the signed or unused demand drafts. Thereafter, complaint was filed by respondent no.03 on 12.06.2018 before Judicial Magistrate (F.C.), Muktainagar, seeking directions for investigation under Section 156(3) of the Cr.P.C., which came to be allowed and thereafter FIR has been lodged.

07. The applicants have contended that the allegations made by respondent no.03 are baseless and unsubstantiated. The learned Magistrate erred in granting order of investigation without taking into consideration the facts of the case. The applicants were possessing only photo-copies of the dying declarations and they never had possession of the original dying declarations. The FIR is nothing but a revengeful act with *mala fide* intention as a counter to the PIL which has been filed by the applicant no.01 against respondent no.03. None of the ingredients of the offence are attracted against them. They have, therefore, prayed for quashing and setting aside the FIR.

08. Affidavit in reply has been filed on behalf of respondent no.02 in pursuance of certain orders passed by this Court. It is stated that the Investigation Officer has seized certain record from the bank. The record of the bank collected showed that restrictions were imposed under Section 35A of

the Banking Regulation Act by the Reserve Bank of India on the activities of Chopda Urban Co-operative Bank. Administrator was appointed and also there was Board. The Administrative Committee had accepted resignation of Mr. S.R. Wankhede on 01.10.2010. So also, thereafter the Reserve Bank of India had cancelled the license granted to the said Bank for carrying out banking activities on 23rd May 2011. By order passed on 25.05.2011 by the Commissioner for Co-operation and Registrar of Co-operative Societies, Pune, liquidator was appointed. The demand draft issued by Chopda Urban Co-operative Bank was in the name of respondent no.03 for Rs. 10,00,000, dated 10.11.2010 and it was signed by authorized officer Mr. K.L. Attarde and one Mr. Y.K. Barhate. Other demand draft for Rs. 09,50,00,000/- for Chopda Urban Co-operative Bank Ltd., Chopda, in the account of Axis Bank was issued by Mr. K.L. Attarde and Mr. SR. Wankhede. The balance-sheet of the bank have been seized. So also, the investigation has been made in respect of cheque book issued by the Axis Bank. The demand draft series no. 006501 to 006550 were used in 2008 only and the other documents are in respect of year 2010. It is stated that the two disputed documents i.e. demand drafts which were shown to have been issued in the year 2010 were, in fact, demand drafts from series of the year 2008 and, therefore, he says that those documents are forged and fabricated and never issued by the bank. Copies of those documents were never asked by the applicant to the Bank under the Right to Information Act nor it was supplied by the Bank to her. Further, in her petition, the applicants have stated that they were in possession of the two disputed documents.

09. Heard applicant / petitioner in Criminal Writ Petition No. 01539 of 2018, in person. Heard learned Advocate Mr. V.B. Patil for the applicants in Criminal Application No. 01906 of 2018. Heard learned Public Prosecutor Mr. A.B. Girase for respondents no.01 and 02. So also, heard learned Senior Advocate Mr. V.J. Dixit with learned Advocate Mr. S.V. Dixit for respondent no.03.

10. Before turning to the arguments, it is necessary to see what is stated in the FIR. Respondent no.03 has stated that he got elected in 2014 from Muktainagar Constituency. His daughter-in-law had also won the election from Raver Constituency. He was the opposition leader as well as Minister. He is socially and politically active. He had taken action against applicant no.01 in 2012 who had purchased agricultural land though she was not agriculturist but produced evidence that she is a farmer. Because of his efforts, the agricultural land purchased by her has been taken over by the Government. Since then, she had grudge against him and she is making baseless allegations against him.

She had made similar baseless allegations when he was Minister in 2016. As she had defamed the political party, respondent no.03 is belonging to, various complaints have been filed in various Courts for defamation against her. Only intention of applicant no.01 is to malign his image and defame him. She filed PIL No. 46 of 2016 on 27.12.2016 and thereafter notice was issued to him and his family members. He had received the notice at his residence at Muktainagar. After receipt of notice, he came to know that in all six persons had filed the said petition. In that petition, there was reference of cheque no. 760596 for Rs. 9,50,00,000/- and cheque no. 006523 for Rs. 10,00,000/-. It is stated that the cheque of Rs. 9,50,00,000/- has been signed by one Mr. Wankhede and other is signed by one Mr. Attarde and Mr. Y.K. Barhate. He had made complaint regarding those false documents with police. Enquiry was made and reply was given to him. It is stated that he had no account or current account with Chopda Urban Co-operative Bank Ltd., Chopda. Under such circumstance, there was no reason why the Bank should give any amount to him. He has not received any such amount from the said Bank. It is stated that, in the enquiry by the police, it was revealed that Wankhede had given resignation on 03.08.2010 and it was accepted on 01.10.2010. Said Wankhede was not employee of the Bank on the date mentioned on the cheque. Therefore, he had no authority to sign on any document. Further, there were also restrictions on Chopda Urban Co-operative Bank imposed by the Reserve Bank of India. On that count also, there was no question of issuance of cheque to him. It is stated that both the demand drafts and cheques are false and fabricated. They were not signed by employees after appointment of the administrator. He obtained certified copies of PIL and it is his say that the petitioners in the PIL had committed theft of the cheques, put content on the false documents and used it by preparing false stamps. It is stated that it is necessary to investigate as to how the accused persons obtained possession of those documents. He had, therefore, lodged complaint with the police, but no cognizance was taken and, therefore, he filed complaint with Judicial Magistrate (F.C.) for investigating the matter under Section 156(3) of the Cr.P.C.

11. The party in person as well as learned Advocate Shri V.B. Patil representing applicants no.02 to 06 have taken us through the record. The party in person made submissions as to the reason why she has filed the PIL. Copy of the PIL is also made available. They both have contended that whatever document was received by the applicants was photo-coy of both the demand drafts and they were never in possession of the original documents. The party in person also submitted that since she has filed the

said PIL, respondent no.03 is indulging in the act of prosecuting her at different places so that she should go to those places and face the trial. Thus, the act of harassment only for taking revenge is stated to have been adopted. Further, both of them have produced on record, copies of remand report in C.R. No. 116/2018 presented before the Judicial Magistrate (F.C.), Muktainagar, as it is stated that accused nos.07 to 10 have been arrested and the investigation has been carried out. It is stated that during the course of investigation, it was transpired that accused nos. 07 to 10 were working as Manager, Cashier and Recovery Officer in Chopda Urban Co-operative Bank Ltd., Chopda, District Jalgaon. It is stated that one Vijay Rangrao Nikam is relative and friend of accused no.07. Accused nos.08 to 10 had signed both the demand drafts which were blank and accused no.07 was taking those documents to Mumbai for overdraft. He along with said Vijay Nikam halted at Ramniwas / Ramdev Lodge at Dadar, Mumbai and at that time, Vijay Nikam had stolen those cheques / demand drafts from accused no.07. It has been submitted by the applicants that, if this is the prosecution story, then they cannot be held responsible for any of the offences. The party in person also tried to submit that there is also a possibility of demand draft fraud which is typical in nature involving bank employees and, therefore, investigation has to be carried in respect of the same. She submitted that the said documents are part of PIL and, therefore, she would be taking steps in the said proceedings to have investigation on the basis of demand draft fraud. She also submitted that as per the story of respondent no.03, he came to know about the said demand drafts when he received notice of PIL No. 46 of 2016 and thereafter he had allegedly made certain communications. He has not taken any steps in the PIL stating that these documents are forged. Further, it has been submitted on behalf of the applicants that, as per the prosecution story, the demand drafts were stolen in the year 2008 though the date on the document is of 2010. The PIL came to be filed in 2016. Therefore, question of obtaining any such document by them and then making forgery is out of question. The FIR has been filed with *mala fide* intention and, therefore, it deserves to be quashed and set aside.

12. Learned Public Prosecutor as well learned Senior Counsel appearing for respondent no.03 have relied on the statement made by the applicants in PIL No. 46 of 2016. In para 11, following statement is made :-

> " *The petitioners had applied under RTI for the bank statements of Respondent No. 11 and 12 but were not able to get the said data. Petitioners submit that they are in possession of 2 cheques dated 10.11.2010 and 28.10.2010 which had been drawn by the 'Chopda Urban Co-operative Bank Limited'. One*

> *of which is for Rs. 10,00,000/- (Rupees Ten Lakhs) and the other is for Rs. 9,50,00,000/- (Nine Crore Fifty Lakhs) respectively. Copies of both the cheques have been annexed as **Exhibit CCC1 & CCC2**. These payments have been made directly in the name of the Respondent No.11, Eknathrao Ganpatrao Khadse, the same is according to the petitioners, payments as kick-backs."*

Therefore, they have submitted that applicants themselves admitted possession of the two cheques. Learned Public Prosecutor has submitted that the investigation was also made in respect of bank transactions and it was found that those cheques / demand drafts were never encashed. Chopda Urban Co-operative Bank went into liquidation. Prior to that, restrictions were imposed by Reserve Bank of India and, therefore, the administrator was appointed. After the appointment of administrator, none of the employees had any authority to issue cheque or demand draft. It has been revealed in the investigation that, the signatures on those documents are made by accused nos.08 to 10. But it was their practice that they would leave the blank signed documents so that there will not be any inconvenience to the banks in case of their absence. They were the only authorized signatories to the cheques or demand drafts. Definitely investigation is required as to how the possession of those documents was obtained and where the forgery has been committed.

13. Learned Senior Counsel appearing for

respondent no.03 submitted that the documents were produced and allegations were made just to defame the respondent no.03 who was the then Minister. Record of the Bank would show that even signatories to the cheque or demand draft had submitted their resignations prior to the date appearing on the documents and those resignations were accepted. When prima facie case is made out investigation, the learned Magistrate was justified in passing the order of investigation under Section 156(3) of the Cr.P.C. and when such investigation is necessary, the FIR need not be quashed and set aside as against the present applicants.

14. The first and foremost fact that is required to be noted is that, whatever document was produced along with the PIL appears to be photo-stat copy and not the original. The content in para 11 of the PIL appears to be a misstatement as regards the upper part of the said para is concerned because subsequently it is specifically mentioned that the copies of both the cheques have been annexed. Another fact which is required to be noted is that under the Right to Information Act, the party in person has obtained copy of the complaint given by respondent no.03 on 18.01.2017, to Superintendent of Police, Jalgaon, along with which he had attached two photo-copies of demand drafts. Copies of said demand drafts appear to be similar to the copies which have

been produced along with the PIL. It is important to note that, somebody had taken a snap of those documents because thumb / finger of the person taking snap is also appearing in the said copies. In his complaint to the Superintendent of Police, dated 18.01.2017, respondent no.03 has stated that he had received a phone call on his landline, stating that two demand drafts have been put in the post box of his residence and he should look at those documents; something is cooked against him and the demand drafts can be used somewhere. The said phone call was received on 14.01.2017. When he opened the post-box, he found photo-copies of two demand drafts. Thus, according to him also, he had not received the original documents at any point of time. Now, as per the prosecution story, signatures on those documents are original and they belong to accused nos.08 to 10. It has also come on record by way of investigation that those cheques were signed by those persons in 2008 and as per the story put forward by accused no.07, when he had gone to Dadar, Mumbai, in 2010, along with said Vijay Nikam, said Vijay Nikam had stolen it. Thus, whatever had happened was in the year 2010. In ordinary course, possession of those documents ought to have been with the concerned banks but neither since 2008 nor since 2010, any bank had filed any kind of complaint regarding stealing those documents. Therefore, the question of stealing those articles in 2016 when the PIL was filed till 2018 prior to filing the FIR by respondent no.03, does not arise. If they had not stolen the articles, there is no question of committing any kind of forgery by inserting the name of respondent no.03 on those documents by the applicants.

15. As per the prosecution story and the investigation that is carried out uptill now, those cheques were never encashed. The cheques bear date 28.10.2010 and 10.11.2010. Those documents were not of use in 2016. They were mere papers in 2016 or 2018. That means, they were not valuable documents which could have been encashed on that day when either the petition was filed or subsequent thereto. It has not been shown by the prosecution that, there is any connection between accused nos.07 to 10 with accused nos.01 to 06. Further important point is that said Vijay Kadam has not been arrested by the Investigation Officer uptill now, who is stated to be having possession of the documents on the basis of statement given by accused no.07. How far the statement of accused no.07 would be admissible or whether it has any kind of evidential value is a different question. But the said statement appears to have been recorded by the Investigation Officer to have further investigation or it may prove to be helpful to him for further investigation.

16. The perusal of the private complaint would

show that respondent no.03 has made allegations that both the demand drafts were kept in the main branch of Chopda Urban Co-operative Bank and from that they have been stolen. The bank has never made such complaint at any point of time. He also makes a statement that false forged stamps have been prepared in the name of Mr. K.L. Attarde and Mr. S.R. Wankhede, so also, of Mr. K.L. Attarde and Mr. Y.K. Barhate. None of these persons have ever stated that such forgery in respect of their name and stamp has been committed. Therefore, the FIR appears to be the outcome of the rivalry. It would be a futile exercise to ask the present applicants to face trial on the basis of such kind of evidence. Case is made out to exercise the jurisdiction of this Court under Section 482 of the Cr.P.C. as the case definitely falls within the parameters laid down in the case of ***State of Haryana & others Vs. Ch. Bhajan Lal & others [AIR 1992 SC 604]*** . So also, powers of this Court under Article 226 of the Constitution of India are required to be invoked for quashing and setting aside the FIR.

17. Hence, the following order :-

(a) The Criminal Writ Petition No. 1539 of 2018 as well as Criminal Application No. 1906 of 2018 are allowed.

(b) The first information report in C.R. No. 116 of

2018, dated 13.06.2018, registered with Muktainagar Police Station, District Jalgaon, for offences punishable under Section 379, 380, 420, 465, 466, 467, 468, 469, 471, 474, 120B, read with Section 34 of the Indian Penal Code, to the extent of the petitioner in Criminal Writ Petition No. 1539 of 2018 and applicants no.02 to 06 in Criminal Application No. 1906 of 2018, is hereby quashed and set aside.

(c) Rule made absolute in the above terms.

(Smt. Vibha Kankanwadi)
JUDGE

(T.V. Nalawade)
JUDGE

....

puranik / CRIWP1539.18etc