IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 807 OF 2011

1. Dr. Govindsingh S/o Fulchand Rajput
   Age : 58 Years, Occ. Medical Practitioner,
   R/o. Rajput Hospital, Tilak Nagar,
   Sillod, Tq. Sillod Dist. Aurangabad

2. Dr. Nikhilkumar S/o Govindsingh Rajpur,
   Age : 27 Years, Occ. Student,
   R/o. As above ..PETITIONERS

VERSUS

1. Laxminarayan S/o Namdeo Zalwar,
   Age : 57 Years, Occ. Business,
   R/o. Ajintha Post Mukhed,
   Tq. Sillod, Dist. Aurangabad

2. The State of Mharashtra
   Through Police Inspector,
   Sillod City Police Station,
   Tq. Sillod Dist. Aurangabad .. RESPONDENTS

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Advocate for Petitioner : Mr. S. V. Warad
Advocate for respondent no.1 : Mr. D. P. Palodkar
APP for Respondent-State: Smt. P. V. Diggikar

...

CORAM : T.V. NALAWADE AND
SMT.VIBHA KANKANWADI,JJ.
DATE : 30-10- 2018.

JUDGMENT [Per T.V. NALWADE, J] :-

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. The petition is filed for relief of quashing of FIR No. 34-2011 dated 07.04.2011 registered with Sillod City Police Station, Dist. Aurangabad for the offences punishable under Sections 420 read with Section 34 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act, 1881.

3. The crime is registered on the basis of report given by respondent no.1. He has contended that present petitioners were in need of money when they were entering into the transaction of purchasing immovable property and so on 31-01-2011 the amount of Rs. 18,25,000/- was given by the first informant to the present applicants due to previous acquaintance. It is contended that the amount was given as hand loan and no interest was to be charged due to previous relationship. It is contended that only by way of security undertaking of returning of money was given on stamp paper by the petitioners and for repayment of the amount a cheque of that amount was given. It is contended that after the period given for returning the amount when he presented the cheque for encashment, the cheque bounced as there was no sufficient amount in the account of the petitioners. It is contended that when he requested to the petitioners to give the money they gave evasive answers. They told that they would not return any amount and so he was deceived.

4. The submissions made show that case was filed under Section 138 of the Negotiable Instrument Act by the present first informant but the

case came to be dismissed under Section 203 of the Code of Criminal Procedure on 22.04.2013. The FIR was given on 07.04.2011 and the private complaint was filed in the month of May 2011. In the FIR Section 138 of the Negotiable Instrument Act was also mentioned. The order of dismissal made by the learned Judicial Magistrate, First Class was challenge by the first informant and even proceeding like Writ Petition No. 707 of 2015 was filed in this Court. This Court dismissed the Writ Petition by holding that crime was already registered for similar offence and the first informant was at liberty to prosecute that matter. Thus, the private complaint was dismissed under Section 203 of the Code of Criminal Procedure and there was not discharge or acquittal of the present applicants/petitioners.

5. In spite of the aforesaid circumstances the learned counsel for the applicant/petitioners submitted that it will be amount to double jeopardy if the petitioners are made to face the trial if the charge sheet is filed against the petitioners by the Police. He placed reliance on observations made by the Apex Court in the case reported ***AIR 2011 SC 641(Kola Vira Raghavrao Vs. Gorantia Venkateswara Rao and Another)*** The Apex Court in view of the facts of that case observed that when the party was convicted for the offences punishable under Section 138 of the Negotiable Instrument Act, it was not possible to try that party again on the same facts for the offene punishable under Sections 420 of the Indian Penal Code or any other provision of Indian Penal

Code or any other statute, in view of provision of Section 300(1) of the Code of Criminal Procedure. There cannot be dispute over this preposition. The facts of the present matter are all together different.

6. The learned counsel for the first informant placed reliance observations made by Apex Court in the case reported in the year ***2012 Cri.L.J.2432(Sangeetaben Mahendrabhai Patel Vs. State of Gujarat and Another)***. In this case the Apex Court has specifically laid down that if the person is tried for offence of dishonour of cheque punishable under Section 138 of the Negotiable Instrument Act he can be tried for the offences of criminal breach of trust, cheating and abetment as ingredients of those offences are not the same and doctrine of double jeopardy does not apply. This case can help the first informant in the present matter.

7. The learned counsel for the petitioners placed reliance on observations made by the Apex Court in the cases reported as ***2001 (3) Supreme Court Cases 513ALPIC FINANCE LTD VS. P. SADASIVAN AND ANOTHER*** ***2011 ALL MR (Cri) 2597 Mr. Jitendra Nathmal Joshi @ Sharma Vs. The State of Maharashtra and Another*** of this Court and submitted that ingredients of offence of cheating are not made out. This submission is not acceptable. There are allegations that some documents are executed by the petitioner. Execution of the document is not disputed and it is contended that by making false representation signature of the applicants were obtained on those documents including

the cheque. Another submission was made that the amount of consideration Rs. 85,00,000/- which was to be paid to the vendor of the property, the brother of the first informant was transferred by R.T.G.S mode though subsequently and so it cannot be believed that some amount was given by the first informant. This submission is also not acceptable. In the sale deed,there is mentioned that entire amount of consideration was paid on the date of sale deed in the month of January itself. There is no endorsement of the sub registrar to show that the amount was paid in the office of the sub Registrar. Some record is produced to show that in the month of February loan was sanctioned to the applicants and then applicants gave the amount to the vendor. Thus the circumstances crate probability that on the date of sale deed the petitioners were not having money, consideration. In any case all these things needs to be appreciated by the trial Court if the case is filed against the applicant/ petitioners. It will be up to investigating agency to form opinion as to whether material collected makes out the offence. In view of the nature of material available and stands taken by the petitioners, this Court holds that no relief can be granted to the petitioners. In the result, petition is dismissed.

8. Rule is discharged. Interim relief is already vacated by this Court.

9. Today the learned counsel of petitioners requested for granting interim relief. It is refused.

Rule made absolute in those terms.

[SMT.VIBHA KANKANWADI]
JUDGE

[T.V. NALAWADE]
JUDGE

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