

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 6219 OF 2016

Dandu Chinna Srinivasulu Reddy,
Age 46 years, Occu. Business,
Sree Aquatics, R/o. 480-1-1B,
Kodurupada (Village), Nellore-524314
S.P.S.R. Nellore (District),
(Andhra Pradesh)

....Applicant.

Versus

1. The State of Maharashtra,
Through Police Station Chandanzira
Jalna, Dist. Jalna.
2. Mukundram s/o. Jugalkishore Mantri,
Age 51 years, Occu. Business,
R/o. Sambhaji Nagar, Jalna,
Tq. & Dist. Jalna.

....Respondents.

Mr. S.J. Salunke, Advocate for applicant.

Mr. M.M. Nerlikar, APP for respondent No. 1/State.

Mr. Y.G. Somani, Advocate for respondent No. 2.

**CORAM :T.V. NALAWADE AND
SMT. VIBHA KANKANWADI, JJ.**

DATED : 21/08/2018.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The proceeding is filed under section 482 of Criminal Procedure Code for relief of quashing of F.I.R. No. 252/2016 registered with Chandanzira Police Station, Jalna for the offence punishable under sections 406, 420, 468, 471, 34 etc. of Indian Penal Code. The crime is registered on the basis of direction given by the learned Judicial Magistrate, First Class, Jalna in Misc. Criminal application No.

585/2016, which was filed by respondent No. 2, complainant. Both the sides are heard.

2) Complainant Mukundram is the Director of Gauri Agrotech Products Private Limited Jalna which is a private company registered under the Companies Act. It is in the business of manufacture of D. Oil Cake which is also called as D.O.C. and that material is used as fish food or food for chicken. Allegations are made against the present applicant, who is proprietor of Acquatech Nellor, Andhra Pradesh that he joined hands with accused Nos. 1 to 12 of the complaint and by hatching conspiracy, the complainant was made to give delivery of aforesaid product of the complainant company to concerns like Lotus Farm Bangalore, Suresh Poultry Complex Kopal and Vaibhav Traders Mumbai. It is contended that goods worth more than Rs. Two crore were delivered to these three concerns as they were sister concerns of the concern of the present applicant. It is contended that the amount of Rs. One Crore was credited in the account of complainant company by the concern of the applicant and picture was created that this amount was in respect of goods which were to be delivered to aforesaid three concerns. It is contended that due amount is not paid, but action was taken against the complainant like sending notices and giving F.I.R. and thereby the offence of fraud and creation of false record is committed by the present applicant and remaining accused of the complainant. Complaint was filed as against 15 persons.

3) The submissions made and the record show that present applicant was purchasing the aforesaid material through Rasex Traders from Mumbai. In the year 2013 the goods were supplied by one concern from Latur and for that transaction Rasex Traders had acted as agent, broker. The value of goods was around Rs. 1.25 Crore. It appears that the amount of Rs. 1 Crore was sent to complainant when the amount was to be sent to the manufacturer from Latur. As the purchase price was not paid, the manufacturer from Latur filed report against the present applicant in Latur and there, the present applicant was required to pay Rs.1.25 Crore to the manufacturer from Latur. After that the present applicant filed report against manufacturer from Jalna, the complainant and contended that he was deceived by Jalna manufacturer and amount of Rs. 1 crore which was credited in the account of Jalna manufacturer by mistake was misappropriated by them. The submissions made show that in that matter the complainant of the present matter was arrested. Even civil suit is filed against the present complainant by the present applicant for recovery of amount paid by mistake to the present complainant. The submissions made show that present complainant has filed a suit for recovery of some amount against Lotus Farm, Bangalore, but in that suit, present applicant is not made party defendant.

4) Some investigation is already made by police and the report submitted by police shows that no order was placed by the present applicant with Gauri Agrotech Jalna, complainant. Due to

some mistake committed by Rasex Traders Mumbai, the payment was made to present complainant when manufacturer from Latur had given delivery of goods worth more than Rs. 1.64 Crore to present applicant. In ordinary course, present complainant Gauri Agrotech ought to have either returned the money to the present applicant or it ought to have passed the money to the manufacturer from Latur, which had supplied the goods to the present applicant, but that did not happen. It is not disputed that transactions used to take place through Rasex Traders Mumbai. It is also not the case of present complainant that Rasex Traders had placed order for present applicant with the complainant. Thus, if the complainant is deceived, there can be allegations against Rasex Traders or concerns to whom goods are supplied by the complainant and the present applicant can be at the most a witness against Rasex Traders and the concerns like Lotus Farm, Bangalore, Suresh Poultry Complex, Koppal and Vaibhav Traders, Mumbai if the goods are supplied to them by the complainant. It can be said that the complainant has made allegations of aforesaid nature against the applicant even when there is no record with the complainant to show that the aforesaid three concerns are sister concerns of the applicant or there was a promise from the present applicant of any kind in connection with the transactions that the complainant had with the aforesaid three concerns. For proving even the offence of conspiracy, though section 120-B of IPC is not used, there needs to be some material. There is no such material. Thus, it will be futile exercise to ask the present applicant to face the trial if

police file chargesheet against him for aforesaid offence. The report of the police also shows that no material is available as against the present applicant in connection with the allegations made by the present complainant. This Court holds that relief needs to be granted to the applicant.

5) The learned counsel for the applicant placed reliance on some observations made by the Apex Court in the cases reported as **LEX (SC) 2016 12 11 [HDFC Securities and Ors. Vs. State of Maharashtra and Anr.]**. There cannot be any dispute over the proposition made by the Apex Court in respect of the power given to High court under section 482 of Cr.P.C. and the statutory powers of police to make investigation in respect of cognizable offence. The facts and circumstances of each and every case are always different. The relevant facts are already quoted by this Court. In the result, the application is allowed to the extent of present applicant only. Relief is granted to him in terms of prayer clause 'C' and 'D'. Rule is made absolute in aforesaid terms.

[SMT. VIBHA KANKANWADI, J.]

[T.V. NALAWADE, J.]

ssc/