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

CRIMINAL APPLICATION NO. 6539 OF 2015

1. Shrichand Rajaram Kukreja,
Age 57 years, Occu. Business,

2. Suryakant @ Suraj s/o. Shrichand Kukreja,
Age 31 years, Occu. Business,

Both R/o. 901, Tower No. 6,
Sagar Darshan Cooperative Housing
Society, Section-18, Navi Mumbai. **....Applicants.**

Versus

1. State of Maharashtra & another
Through MIDC Waluj Police Station,
Aurangabad.

2. Ashok Karbhari Singare Patil,
Age years, Occu. Business,
R/o. RH-101, Bajaj Nagar,
MIDC, Waluj, Aurangabad. **....Respondents.**

Mr. S.P. Shah, Advocate for applicants.

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

Mr. Swapnl S. Patunkar, Advocate for respondent No. 2.

WITH
CRIMINAL WRIT PETITION NO. 1438 OF 2016

Mr. Jaywant s/o. Vasant Mallya,
Age 49 yeasr, Occu. Service,
R/o. Flat No. 4, Bhadrawati
Apartment, Shivshakti Nagar,
B Cabin Road, Ambarnth (East). **....Applicant.**

Versus

1. The State of Maharashtra
Through Waluj MIDC Police Station,

Aurangabad.

2. The Commissioner of Police,
Aurangabad.

3. Srichand Rajaram Kukreja,
Age 57 years, Occu. Business.

4. Suryakant @ Suraj Srichand Kukreja,
Age 31 years, Occu. Business,
Resp.No. 3 & 4 R/o. Sagar Darshan
Co-op. Housing Society, Sector 18,
Nerul, Navi Mumbai.

5. The Maharashtra Industrial Development
Corporation,
Through its Chief Executive Engineer.
Undertaking having its registered
office at Udyog Sarthi, Marol Industrial
Area, Mahakali Road, Andheri (East),
Mumbai.

6. The Executive Engineer,
MIDC Office Udyog Shakti,
2nd Floor, Aurangabad Industrial
Area, Railway Station Road,
Aurangabad.

7. Ashok Karbhari Shingare Patil,
Age Major, Occu. Business,
R/o. RH-101, Bajaj Nagar,
MIDC, Waluj, Aurangabad.

8. Raosaheb M. Jondhale,
Age Major, Occu. Service,
R/o. C/o Waluj MIDC Police
Station, Waluj, Aurangabad. **....Respondents.**

Mr. Y.S. Choudhari, Advocate for petitioner.

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

Mr. S.S. Dande, Advocate for respondent No. 6.

CORAM :T.V. NALAWADE AND
SMT. VIBHA KANKANWADI, JJ.
DATED : 08/10/2018.

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

1. The first proceeding bearing Crimnal Application No. 6539/2015 is filed for relief of quashing of F.I.R. No. 443/2015 registered with M.I.D.C. Waluj Police Station, Aurangabad for offences punishable under sections 406, 420, 467, 468, 471 and 34 of Indian Penal Code (hereinafter referred to as 'IPC' for short). Notices were issued in this proceeding and during arguments, the learned APP has made the papers of investigation available. Second proceeding bearing Criminal Writ Petition No.1438/2016 is filed by one Mr. Jaywant Mallya for relief of direction to initiate criminal proceeding against respondent Nos. 3 and 4, for giving direction to Maharashtra Industrial Development Corporation (hereinafter referred to as 'M.I.D.C.' for short) to take proper steps in respect of fraud committed against M.I.D.C., for giving direction to take action against Raosaheb Jondhale, police officer involved in the investigation of the crime, as according to the petitioner, he tried to cover up things. Relief is also claimed for giving direction to hand over investigation to other agency like Criminal Investigation Department (C.I.D) and Central Bureau of Investigation (C.B.I.).

2. The petitioner of the second proceeding, criminal writ petition was employee of applicants in the first proceeding. Applicants of the first proceeding were doing the business through Bharat Udyog Limited of setting up and functioning of sewage treatment plants and other business.

3. In the 2009-10, M.I.D.C. Waluj, Aurangabad decided to set up sewage treatment plant for M.I.D.C. Area and it floated tender. The applicants of the first proceeding, directors, were having the management of their company which was one of the bidder. Their tender was accepted and work order was issued in their favour on 25.11.2011. As per the work order, the sewage treatment plant was to be set up and made functional within 18 months from the date of all statutory approvals. Possession of the site was given to these applicants. As per the agreement, the amount of Rs. 3.5 Crore was to be given by M.I.D.C. to the applicants as their investment for the project and the applicants were to invest remaining amount as their investment. The applicants' company was given right to recover that amount invested in monthly installments and M.I.D.C. was to pay monthly installment of Rs. 27 lakh continuously for 20 years to the company of applicants.

4. The company of the applicants entered in to agreement in January 2012 with other company, S.W.D. Infrastructure Private Limited and it was engaged as Sub Contractor to execute the work. In turn, in January 2013 S.W.D. Infrastructure entered in to an agreement with complainant and complainant was appointed as Sub Contractor by S.W.D. Infrastructure Company. It is the case of complainant that this transaction was within the knowledge of the present applicants and various meetings were held for discussion of the completion of the project. The complainant continued execution of work as Sub Contractor of S.W.D. Infrastructure till June 2014 and then company of the present applicants entered in to an agreement directly with the complainant and the complainant was asked to execute the entire work as Sub Contractor of company of the applicants. It is the case of complainant that he and S.W.D. Infrastructure spent the money for completing infrastructure and as per agreement, the complainant is entitled to get the money.

5. It is the contention of the complainant that S.W.D. Infrastructure had already executed the work worth Rs. 1.35 Crore, but this amount was not given by company of the applicants to S.W.D. Infrastructure. It is contended that when complainant entered in to contract with the company of

applicants, there was the understanding that the amount which was due to S.W.D. Infrastructure was to be given to the complainant. The particulars of the work executed by the complainant as Sub Contractor of S.W.D. Infrastructure and as Sub Contractor of company of applicants are given and as per those contentions, from January 2013 the complainant executed the work and spent amount for other reasons like deposit and tax and thereby he was required to spend Rs. 5.13 Crore. The complainant admits that the amount of Rs. 3.68 Crore was given to him either through S.W.D. Infrastructure or directly by the company of the present applicants. It is his contention that under other counts and on the count of work executed, the amount of Rs. 2.52 Crore is due to him from the company of the applicants. Around 50% of the work of infrastructure was completed and then M.I.D.C. terminated the contract. Project is not yet completed.

6. It is contended that after 5.5.2014 when the complainant executed work as directly Sub Contractor of company of the applicants, he raised bills in the name of applicants company in respect of that amount, in respect of that work and that was amount of Rs. 2.12 Crore. This amount was, according to him, in addition to the of Rs. 2.52 Crore, which was

in respect of work executed as Sub Contractor of S.W.D. Infrastructure. It is contended that the applicants then started avoiding the complainant and they stopped making payment to the complainant. It is contended that the complainant had purchased the material for execution of work, but the applicants represented to the financial institutions and banks that the material belong to the company of the applicants and they raised loan on it. It is contended that when his staff was doing work, false record was created by the applicants to the effect that his staff like Engineers were working for the company of the applicants and that way, the bills were raised with M.I.D.C. and loan was taken from banks and financial institutions. It is contended that the amount collected from the banks and also from M.I.D.C. was not passed to the complainant even when work was executed by complainant. It is contended that by creating false record and by avoiding to make the payment and by making false representation to the complainant and others, the applicants have committed the aforesaid offences.

7. It is the contention of Jaswant Mallya, the petitioner of the second proceeding that he was working as tender executive in the company of the applicants from 2009. It is his contention that Bharat Udyog Limited company was executing

works through its sister concern Swaraj Infrastructure Private Limited and the applicants are the owners of that concern. It is contended that he was then appointed as licensing executive by Bharat Udyog Limited and in that capacity, he was making correspondence with Government and authorities (employers of applicants). It is his contention that he has information about the present project of M.I.D.C. Waluj Aurangabad and he had done the compliance of record for getting the work.

8. It is the contention of Mr. Mallya that as per the directions given by the applicants, he created false record to show that staff of the complainant from first proceeding was working for the company of the applicants. He has contended that the signatures on the record were not made by the staff of the complainant. He has contended that due to approach of the applicants of collecting the money for work, taking advances for the work and raising loan on the sites given for work and then abandoning the work, in most of the cases the contracts were terminated by the employers. He has mentioned that as per the directions given by the applicants, he had filed writ petitions like Writ Petition No. 52/2015 in respect of some projects when the contract was terminated and false contentions were made that the work could not be executed as loan could not be raised for

the project. It is his contention that loan was actually raised, but the work was not completed. He has contended that by showing articles of others like complainant, loan was raised and the loan was raised by using lease documents also. He has contended that when the cost of the project was Rs.12.60 Crore, it was shown as Rs.28.67 Crore and loan of Rs.8.73 Crore was taken by the applicants from Oriental Bank of Commerce. He has contended that even when the project was not made functional, by using the record of this project and by showing that this work was given to Swaraj Infrastructure Private Limited, sister concern, the loan of Rs.5.05 Crore was taken by that concern. It is contended that in Writ Petition No. 1514/2015 false contention is made that no lease document was executed and that is why, loan was not sanctioned by the bank when from different banks loan was raised by creating false record.

9. The information is supplied in respect of other works projects of the applicants and they are as under :-

(i) Waluj Truck Terminal Project of M.I.D.C. Waluj :– On this project, loan of Rs.5.50 Crore was taken from Kotak Mahindra Bank, but work was not executed and the contract is terminated. The site given by M.I.D.C. is seized by Kotak Mahindra Bank.

In respect of this termination, proceeding like Writ Petition No. 1414/15 is filed at Principal Seat of this Court and it is contended that loan was not taken when loan was actually taken and work was not executed.

(ii) Latur M.I.D.C. Truck Terminal :- When the cost of the land allotted was hardly Rs.40 lakh, by creating false record of valuation, the amount of Rs.16 Crore was raised from SICOM Ltd. (State Industrial and Investment Corporation of Maharashtra Limited), financial company.

(iii) Taloja Truck Terminal of Taloja :- The amount of Rs. 3 Crore was taken from Shreyas Financial Company. The amount of Rs.29 Crore was taken from Oriental Bank of Commerce and amount of Rs.21 Crores was taken from Karur Vaishya Bank.

(iv) Ambernath CEPT M.I.D.C. Project :- Loan of Rs.5 Crore was taken from Navjivan Cooperative Bank and loan of Rs. 11.88 Crore was taken from Abhudaya Bank.

(v) Varp Project of M.M.R.D.A. [Mumbai Metropolitan Region Development Authority] :- Loan of Rs. 8 Crore taken from Kotak Mahindra Bank. For that false record was used to show that the land was not reserved for play ground when the land was actually reserved for play ground.

(vi) Anjul Project Road :- Loan of Rs.1.37 Crore was raised from Punjab National Bank. Loan of Rs.16 Crore was raised from SICOM, financial company without informing that the loan was taken from other bank.

10) Some record showing that action is taken by Kotak Mahindra Bank under the Secuterisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) is produced. The record in which false contentions were made in the High Court is also produced. This record can be considered as record produced by accused/witness as those documents and contentions are made by their own employee. This can be used to ascertain the modus operandi of the applicants.

11. This Court has seen the report prepared by Investigating Officer Shri. Jondhale. It appears that he is trying to blame the employees of company of the applicants like Shri. Mallya and Project Manager Shri. Rajendra Yadav by contending

that they created false record of the staff of the applicants and that contention can be seen in his report dated 4.11.2016 given to Public Prosecutor of this Court. The other report dated 1.8.2017 addressed to Public Prosecutor of Police Inspector Shri. Sabale shows that he formed opinion that the transaction is of the nature of civil dispute.

12. The submissions made and the record show that it is brought to the notice of police that the company of the applicants has used peculiar modus operandi, they obtained work orders from various Government Institutions and authorities, they took advance amount in the name of investment of the institution and by using the record of project, they raised huge loan from banks including nationalised banks and financial institutions, they appointed Sub Contractors, but they did not pass on money taken by them as investment of Government Institution to Sub Contractors and most of the works were not completed and the contracts were terminated. As the loan was raised only on those projects, the sufferers may be Government Institutions and Sub Contractors. There is clear possibility that without informing to the authority or Government Institutions, without taking their permission, the property of the Corporation, institutions of the Government is mortgaged for

raising the loan. Only few transactions are informed by their employee Shri. Mallya and there is possibility that there are many other such transactions. In the present matter, the investment of M.I.D.C. of Rs.3 Crore was collected by the applicants and loan of more than Rs. 11 Crore was raised on the project, but that amount was not passed on to the Sub Contractors. It can be said that not a single pie was invested by the present applicants atleast in the present project and money was made by using aforesaid modus operandi. In such cases, it cannot be said that it is civil dispute between applicants and the Sub Contractors. The submissions made show that there was no permission given to appoint such Sub Contractor and that is why the record was created that the staff of the Sub Contractor was working for the applicants. Not only the Sub Contractor is deceived, but also M.I.D.C., Government Corporation is deceived in the present matter. That aspect is lost sight of by the investigating agency. When some specific material is supplied by anybody like the employee of applicants, the Investigating Office cannot ignore such material and he needs to make thorough investigation in to every aspect. It is unfortunate that the police officers like officers mentioned above are putting blame only on the employees of the applicants when the real beneficiaries are applicants. The Home Department of the State

Government needs to look into the matter and needs to take appropriate action against such officers. Thorough investigation not only in the present matter is required, but in to other matters also thorough investigation is required as there is possibility of registration of many such fraud cases against the applicants in view of the circumstance that actions for recovery are already started by banks and financial institutions against the applicants. The money collected by the applicants needs to be traced as it is a public money and that aspect cannot be ignored by this Court. More investigation needs to be made to find out as to how almost all M.I.D.Cs. gave work to applicants when their reputation is of aforesaid nature. In view of all these circumstances, this Court holds that no relief can be granted to the applicants. As there is possibility of aforesaid nature, the commission of offences in respect of other projects and also commission of offences against the banks and other financial institutions and possibility of joining hands by the bank employees with the applicants, the State Government needs to think over it and needs to hand over investigation to speciliased agency like Economic Wing or C.B.I. to make investigation into all the incidents in which the companies of the applicants are involved. Unless it is done, the public money collected by the applicants by exercising fraud cannot be recovered. Such persons are diverting money to other places including outside of India and they are leaving the country easily for not returning in future. This possibility also needs to be kept in mind by the State and in that regard, steps need to be taken by the State immediately.

13. The learned counsel for applicants from the first proceeding placed reliance on the observations made in following cases :-

> **(i) (2009) 8 Supreme Court Cases 751 [Mohammed Ibrahim And Ors. Vs. State of Bihar and Anr.],**
>
> **(ii) (2014) 10 Supreme Court Cases 663 [Binod Kumar and Ors. Vs. State of Bihar and Anr.].**

The facts and circumstances of each and every case are always different. Relevant facts of the present matters are already mentioned by this Court. The learned counsel for respondent, first informant placed reliance on observations made in following cases :-

> **(i) (2014) 3 Supreme Court Cases 389 [Vijayander Kumar and ors. Vs. State of Rajasthan and Anr.],**
>
> **(ii) 2009 ALL MR (Cri) 1964 [Prashant Jhunjhunwala s/o. Late Shri. Rajkumar Jhunjhunwala Vs. Union Territory of Daman & Diu, through its Secretary & Ors.],**

(iii) AIR 2001 SC 3846 [Kamaladevi Agarwal Vs. State of West Bengal and Ors.],

(iv) 2009 ALL MR (Cri) 3294 [Kisanlal s/o. Dagdulal Rathi Vs. State of Maharashtra & Ors.]

There cannot be dispute over the proposition that even when the dispute may be of civil nature, in some cases when the same allegations disclose criminal offences, the Court is not expected to quash the F.I.R. or the criminal proceeding. Present case is much more serious and at no stretch of imagination, it can be said that it involves only civil dispute. In the result, following order.

<u>O R D E R</u>

(I) Both the proceedings are dismissed. Interim relief, if any, granted by this Court earlier is vacated.

(II) Copy of this order be sent by Registrar Judicial to the Principle Secretary of Law and Judiciary, State of Maharashtra and to Secretary of Home Department of State of Maharashtra for placing the same before the competent authority for further orders as per the observations made by this Court.

(III) The applicants/petitioner of both the proceedings are not to be allowed to leave the country without prior permission of this Court and steps in that regard, to prevent the escape of the applicants and other accused from the present matters are to be taken by the State Government.

[SMT. VIBHA KANKANWADI, J.] **[T.V. NALAWADE, J.]**

ssc/