IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3076 OF 2017

Kushal Sameer Mehta.] … Petitioner

Versus

The State of Maharashtra & Anr.] … Respondents

Mr. Mihir D. Gheewala for Petitioner.
Mrs. M. M. Deshmukh, Addl. P. P. for State - Respondent No.1.
Mr. Mahesh Vaswani a/w Ms. Dharini Nagda & Ms. Sophiya Hasan for Respondent No.2.

CORAM :- R. M. SAVANT & SARANG V. KOTWAL, JJ.
DATE :- 12 APRIL, 2018

P. C. :-

1. The present Petition has been filed by the Petitioner seeking quashing and setting aside of the M.E.C.R. No.3/2014 registered with the Dr. D. B. Marg Police Station, Mumbai, C.C.No.30/SW/2014 filed with the learned Metropolitan Magistrate, 18th Court, Girgaon, Mumbai and the order passed under Section 156(3) of the Cr.P.C. in the said proceedings. The Respondent No.2 has filed the said C.C.No.30/SW/2014.

2. Before referring to the FIR which is sought to be quashed by way of the present Petition, it is necessary to mention the background in which the present Petition was filed.

Both the Petitioner as well as the Respondent No.2 are co-accused in the charge-sheet filed after investigation of C.R.No.181 of 2013 registered with the L. T. Marg Police Station, Mumbai. The said offence was registered at the instance of one Mr. S. Subramanian who was employed as the Assistant General Manager of Specialized Assets Recovery Management Branch of South Mumbai with Bank of India. The said FIR was lodged against Vadilal Sanghvi, Paresh Sanghvi and the present Respondent No.2 under Sections 464, 465, 466, 467, 471, 474, 406, 420 read with Sections 120B and 34 of the IPC. It was mentioned in the said FIR that the aforementioned Wadilal Sanghvi, Paresh Sanghvi and the Respondent No.2 were the partners of M/s. Mitesh Exports. They had a business of purchase and sale of diamonds. They had taken loan to the tune of Rs.9.50 Crores in the year 2009 from the Bullion Exchange Branch of the Complainant - Bank and they had mortgaged different properties as security for the said loan. The loan amount was not repaid and on 30/09/2010 the bank account of M/s. Mitesh Exports was declared as NPA.

Accordingly, the bank started the proceedings for recovery. When the Complainant - Bank had commenced the process of auction; on behalf of M/s. Mitesh Exports, the stay order passed by the Hon'ble Supreme Court and the Treasury Challan of Rs.1.50 Crores was produced. When the Complainant - Bank verified as to whether such order was passed, it was revealed that the said stay order and the Treasury Challan were forged. According to the Complainant, by 23/11/2010, the due amount rose to Rs.15,58,74,529/-. The FIR was lodged as a forged order of the Apex Court was produced in the proceedings to deprive the bank from recovering their legitimate dues.

The investigation was conducted and the final report under Section 173 of the Cr.P.C. was filed on 23/01/2015 against the aforementioned partners of M/s. Mitesh Exports and the present Petitioner was shown as a wanted accused.

3. On 24/03/2014, the Respondent No.2 filed the proceedings in the Court of the learned Metropolitan Magistrate, 18th Court, Girgaon, Mumbai, which are presently numbered as C.C.No.30/SW/2014 seeking directions under Section 156(3) of the Cr.P.C. for investigation in the offences committed by the present

Petitioner. The said proceedings were filed against the present Petitioner and one Nilesh Parab. In the complaint filed before the learned Magistrate, the Respondent No.2 herein had alleged that the Petitioner claimed to be a legal consultant and adviser. The second accused Nilesh Parab was introduced by the Petitioner to the Respondent No.2 as a detective. According to the Respondent No.2, his firm had suffered huge setback in the business and was unable to pay the loan taken from the Bank of India and thereafter wanted the loan to be reconstructed. It is, at this stage, the Petitioner, as their legal adviser, stepped in to take care of all the Court proceedings. According to the Respondent No.2, the Petitioner forged and fabricated various documents and obtained huge fees from the Respondent No.2. The Petitioner induced the Respondent No.2's firm in believing that he had contacts with a firm in Spain which could provide Rs.11.5 Crores for settlement of the loan. According to the Respondent No.2, the Petitioner represented that the said amount was duly received in India and handed over certain documents in that behalf. Ultimately, the Respondent No.2 found out that most of the documents supplied by the Petitioner were forged documents. These documents included various orders of the High Court as well as the

Hon'ble Supreme Court, Challans, RTGS forms, Roznamas, Agreements, Emails, etc. The complaint lists about 48 such documents which were forged and which were provided by the Petitioner to the Respondent No.2.

4. The learned Magistrate, vide his order dated 28/03/2014, was pleased to send the complaint for investigation under Section 156(3) of the Cr.P.C. Pursuant to the said order, M.E.C.R. No.3/2014 was registered at Dr. D. B. Marg Police Station, Mumbai, on 28/04/2014 under Sections 406, 420, 465, 467, 471 read with Sections 120B and 34 of the IPC against the Petitioner and Nilesh Parab. The said FIR and the aforementioned proceedings are sought to be quashed by the Petitioner in the present Petition.

5. In the FIR registered pursuant to the order of the learned Magistrate, the Respondent No.2 has reiterated the allegations against the Petitioner in detail. The FIR enumerates various forged documents which were given and used by the present Petitioner. In addition to these allegations, the FIR also mentions that the Petitioner had taken diamonds worth Rs.50 Lakhs on false pretext and did not

pay the amount. The Respondent No.2 was induced into parting with the diamonds and was put to the additional loss of this amount. The Petitioner had taken a total amount of Rs.1,09,57,500/- from the Respondent No.2's firm on the pretext for different purposes which included his legal remuneration, fees for lawyers, amounts required to be deposited in Court, Challan, etc. Thus, according to the Respondent No.2, his firm was duped to the tune of Rs.1.71 Crores by the Petitioner.

6. We have heard Mr. Mihir D. Gheewala, learned Counsel for the Petitioner and Mr. Mahesh Vaswani for the Respondent No.2. We have also heard Mrs. M. M. Deshmukh, the learned Addl. P. P. for State - Respondent No.1.

7. The principal contention of Mr. Gheewala is that the FIR which is the subject-matter of the present Petition is in the nature of second FIR in respect of the same transaction and hence was not maintainable. According to Mr. Gheewala, the FIR registered vide C.R.No.181 of 2013 at L. T. Marg Police Station was in respect of the same subject-matter i.e. forgery of Court documents. According to

Mr.Gheewala, the investigating agency, while investigating into the said offence, could have comprehensively investigated and all the documents which are subject-matter of the present FIR could have been verified in that first investigation. According to Mr. Gheewala, the FIR registered with Dr. D. B. Marg Police Station pertain to the same transaction and therefore, was liable to be quashed. Mr.Gheewala further submitted that the Respondent No.2 has suppressed from the learned Magistrate that he himself was a co-accused in the C.R.No.181 of 2013 registered with L. T. Marg Police Station. Mr. Gheewala further submitted that the complaint lodged by the Respondent No.2 was reflecting his *mala fide* intentions as the Respondent No.2's firm was the real beneficiary in the entire episode and therefore, the Respondent No.2 was just shifting the blame on the Petitioner to save his own skin. Mr. Gheewala relied on the Judgment of a Division Bench of this Court in the case of ***Kashinath Kutwal & Anr. Vs. The State of Maharashtra & Anr.***[1] wherein it is held that if two FIRs are filed in respect of the same incident and the same occurrences, the second FIR had to be quashed.

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8. *Per Contra*, Mr. Mahesh Vaswani, the learned Counsel for the Respondent No.2, submitted that the grievance of the Respondent No.2 against the Petitioner could not be said to be forming part of the same transaction. Mr. Vaswani submitted that, the Petitioner has duped the Respondent No.2's firm for a huge amount by extracting money on the pretext of pursuing legal proceedings in various Courts. Mr. Vaswani submitted that the complaint lodged by the Respondent No.2 elaborately describes as to how their firm was duped. Mr.Vaswani submitted that only two of the documents i.e. the purported order passed by the Hon'ble Supreme Court and the Treasury Challan; both of which are forged documents; are part of the investigation carried out by the L. T. Marg Police Station. The rest of the documents mentioned in the Respondent No.2's complaint are 48 in number and therefore there is a material difference between the two proceedings. Mr. Vaswani relied on the Judgment of the Hon'ble Supreme Court in the case of ***Awadesh Kumar Jha Alias Akhilesh Kumar Jha Vs. State of Bihar***[2], wherein it is held that though the second FIR in respect of the same transaction was not permissible, the

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said principle was not applicable if the transactions impugned in two FIRs were different.

9. The learned Addl. P. P. Mrs. Deshmukh supported the investigation carried out by Dr. D. B. Marg Police Station on the complaint lodged by the Respondent No.2. Mrs. Deshmukh submitted a report dated 23/02/2018 given by the Police Inspector, Dr. D. B. Marg Police Station, Mumbai. The report mentions that though 3 documents from the investigation of L. T. Marg Police Station are included in the investigation carried out by Dr. D. B. Marg Police Station, there were in all 12 forged documents forming part of their investigation. The report also mentions that in the past, two offences under the similar sections of IPC were pending against the Petitioner at L. T. Marg Police Station.

10. Having considered the submissions advanced on behalf of the parties, we find that the offence registered at the instance of the Respondent No.2, which is the subject-matter of the present Petition, is a separate and distinct offence committed by the Petitioner. The allegations made by the Respondent No.2 in the complaint and the

FIR pertain to the personal financial loss suffered by the Respondent No.2 and his firm resulting from the offences committed by the Petitioner. The FIR lodged by the Respondent No.2 is not restricted to the forged order of the Hon'ble Supreme Court and the forged Treasury Challan but the said FIR makes reference to various other documents which were fabricated by the Petitioner. These documents were used by the Petitioner inducing the Respondent No.2's firm to part with huge amounts at various stages. According to the Respondent No.2, he was misled into believing that the amounts given by the Respondent No.2's firm were properly utilized by the Petitioner in pursuing the litigation in various Courts. The allegations made by the Respondent No.2 also pertain to the false representation made by the Petitioner that he has facilitated raising of money from a foreign firm based in Spain and the Respondent No.2 was misled to believe that the said amount was utilized in repayment of the loan. The FIR also contains the allegation that the Petitioner had induced the Respondent No.2 to part with diamonds worth Rs.50 Lakhs and was duped to that amount. All these allegations are not the subject-matter of the previous investigation carried out by the L. T. Marg Police Station. Therefore, it cannot be said that the allegations made in the

FIR and the complaint which are the subject-matter of the present Petition, are forming part of the same transaction which is the subject-matter of the investigation carried out by the L. T. Marg Police Station in C.R.No.181 of 2013. Of course, the truthfulness of the allegations made by the Respondent No.2 will have to be determined after the investigation and trial.

11. In these circumstances, we do not find any merit in the above Petition. The Petition is accordingly dismissed.

(SARANG V. KOTWAL, J.) **(R. M. SAVANT, J.)**