

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2093 OF 2016

Nikhil Pratap Rai Gandhi & Ors.	...	Petitioners
VS.		
The State of Maharashtra & Anr.	...	Respondents

Mr. Himanshu V. Pradhan i/b. M/s. Crawford Bayley & Co.,
Advocate for the petitioners.

Mr. Vijay Gharat a/w. Mr. R.R. Momin, Advocate for respondent no.
2.

Mr. Vinod Chate, APP for the respondent no. 1/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 18th March, 2019**

P.C. :

Rule. Rule made returnable forthwith. By consent, the Writ
Petition is heard finally and decided at the stage of admission.

2. The petitioners have moved this Writ Petition directing
against the order dated 30th July, 2014 passed by the learned
Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier,
Mumbai in C.C. No. 4783/SW/2013 and also the order dated 20th
April, 2016 passed by the learned Additional Sessions Judge, City
Civil and Sessions Court, Greater Bombay in Criminal Revision
Application No. 1589 of 2014. The respondent no. 2 has filed

private complaint under section 406, 420, 504, 506(2) r/w. 34 of Indian Penal Code and in it, the report under section 202 of Cr. P.C. was filed by M.R.A. Marg Police Station on 10th April, 2014 in C.C. No. 4783/SW/2013. After going through the report, the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai has dismissed the complaint by judgment and order dated 30th July, 2014. The said order was challenged by respondent no. 2/original complainant in Revision Application and the learned Additional Sessions Judge by its judgment and order dated 20th April, 2016 has allowed the said Revision Application and issued process against the petitioners/original accused nos. 1 to 5 under sections 406, 420, 323, 504, 506 r/w. 34 of Indian Penal Code. Hence this Writ Petition.

3. The learned counsel for the petitioners has submitted that the order passed by the learned Sessions Judge is erroneous in view of the report of the police filed under section 202 of Cr.P.C. In the complaint, the complainant has contended that he is a Chartered Accountant, he gave services to the company owned by the petitioners and the company hired his services for obtaining loan of Rs.500 crores and there was an agreement dated 10th

August, 2011 between the parties that for that work by which the company was to pay Rs.82 lakhs to respondent no. 2/original complainant. The learned counsel submitted that the dispute is of civil nature and in fact no services were hired, no loan was disbursed by any bank to the accused at the instance of original complainant. He further submitted that the directors did not sign any such agreement with him and the case is at the most of the civil nature.

4. The learned counsel for respondent no. 2 has submitted that there was acceptance by the company that they would pay him Rs.82 lakhs and the loan was disbursed and hence it amounted to cheating.

5. Perused the report dated 28th March, 2014 of Police Inspector, M.R.A. Marg Police Station wherein after recording the statements and after thorough investigation, the police gave the report that there is no case of cheating or fraud against the petitioners/original accused. The police have only registered NC for abuse under sections 323, 504 and 506 of Indian Penal Code against the accused. The police officer also opined that the

dispute is of civil nature. A pertinent question was put to the learned counsel for respondent no. 2/the original complainant to show some document about the actual disbursement of loan by the bank in favour of the petitioners. No such document regarding actual disbursement of the loan is produced. Under such circumstances, no case of cheating or fraud is made out. The order passed by the learned Magistrate is correct. However, the order passed by the learned Sessions Judge is illegal and wrong and hence it is set aside.

6. Rule made absolute as prayed by the petitioners. The order of the learned Magistrate of dismissing the complaint is upheld.

(MRIDULA BHATKAR, J.)