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

CRIMINAL WRIT PETITION NO. 110 OF 2018

1. Alok Arjun Parwani,
Age 54 years, Occu. Business,
R/o. Survey No. 284/1, Pallod
Farms-3, Baner, Pune 411045.

2. Pravin Narsing Parwani,
Age 45 years, Occu. Business,
R/o. 202, B Wing, Crystal Avenue,
Parkhe Mala, Baner Road,
Pune 411045. **....Petitioners.**

Versus

1. The State of Maharashtra,
through Senior Police Inspector,
Rural Police Station, Beed.

2. Vishwanath Dagdu Hule,
Age 51 years, Occu. Business,
R/o. Manglawadi, Charta Fata,
Beed – Nagar Road, Beed,
District Beed. **....Respondents.**

Mr. A.A. Yadkikar, Advocate for petitioners.

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

Mr. V.R. Dhorde, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**
DATED : 14/01/2020.

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

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

2) The proceeding is filed for relief of quashing of F.I.R. No. 291/2017 registered with Rural Police Station, Beed for the offences punishable under sections 406, 418, 420, 426, 506 and 34 of Indian Penal Code (hereinafter referred to as 'I.P.C.' for short). The crime is registered on the basis of direction given by the learned J.M.F.C. in a private complaint filed by respondent No. 2.

3) The informant owns a petrol pump where diesel is also sold. According to him, he knew present petitioners from prior to 2014. According to him, they had approached him and they had requested him to sell diesel to them on credit as they were having the work of one project, of creation of tunnel. They were purchasing diesel for their transport vehicles. According to the informant, diesel was purchased on credit basis by the petitioners during the period 8.2.2014 to 11.3.2015 and the value of the diesel was around Rs.30.27 lakh. It is contended that the credit memos were created by his staff accordingly. According to him, the petitioners had paid amount of Rs.14.22 lakh in respect of the diesel purchased and the amount due from them is Rs.15.75 lakh. It is contended that promise was given by the present petitioners to make the remaining payment after getting final bill of aforesaid work. It is contended that the petitioners had collected the amount of Rs.8.5 Crore in respect of aforesaid project, but they did not make payment and when he made the demand of money, they flatly refused to give the money. It is

contended that by committing breach of agreement, he is deceived by the present petitioners. According to him, he had approached police, but police had not taken cognizance of his report. He had filed private complaint before J.M.F.C. and J.M.F.C. made the order of investigation under section 156 (3) of Cr.P.C.

4) This Court has carefully gone through the reply filed by the informant in the present matter and police papers. It was submitted by the learned APP that as per the record maintained by the informant the diesel worth more than Rs.30 lakh was sold and the amount due is more than Rs.15.75 lakh. The learned counsel for informant submitted that this amount is shown in Income Tax Return also by the informant.

5) It is not disputed by the informant that there was agreement of sell of diesel on credit basis and accordingly, by preparing credit memos, diesel was sold on different occasions. It was submitted by the counsel of petitioners that well before 2015 the aforesaid project of tunnel was over and there was no possibility of purchasing more diesel in the year 2015. The submissions made show that informant subsequently filed civil suit for recovery of the amount due.

6) When there is sale on credit basis, in respect of every

sale credit memo is required to be prepared which needs to be signed by the person or his representative in whose favour the credit is given. Thus, it will be necessary for the informant to prove that the amount of Rs.15.75 lakh is really due from the present petitioners. Only on the basis of the account maintained by the informant, inference cannot be drawn of liability against the petitioners. At present, there is no explanation with informant as to why action was not taken after March 2015 when huge amount was due and the petitioners had stopped purchasing diesel as probably their project was completed. In ordinary course, the pump owner would have given notice and he would have demanded the money by giving particulars of the sale. This did not happen and first time he approached police and Magistrate in the later part of 2017. On the basis of aforesaid circumstances, it cannot be said that right from beginning there was intention of deceit. The amount of Rs.14.22 lakh was admittedly paid by the petitioners and this circumstance is sufficient to show that there was no intention to deceive and huge amount was paid by the petitioners for purchasing diesel on credit basis. No record of civil suit is produced and whatever is mentioned by this Court is on the basis of the contents of the F.I.R. As it cannot be said that right from beginning there was intention to deceive, this Court holds that it will be abuse of process of law if the informant is allowed to prosecute the matter on criminal side. It can be said that he wants to pressurise the petitioners and under that pressure he wants to get amount from the petitioners. Allowing the informant to do such thing amounts to misuse of process of law. This Court holds that relief needs to be given to the petitioners. In the result, following order :-

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

(I) The petition is allowed.

(II) Relief is granted in terms of prayer clause ‘B’.

Rule is made absolute in those terms.

[M.G. SEWLIKAR, J.] **[T.V. NALAWADE, J.]**

ssc/