

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

WRIT PETITION NO.3081 OF 2016

Umesh Chatrabhuj Manek and Anr. ...Petitioners

vs.

The State of Maharashtra and Ors. ...Respondents

Hrishikesh Mundargi for the Petitioners.

Dr. F. R. Shaikh, APP for the Respondent/State.

**CORAM : B. P. DHARMADHIKARI &
N. R. BORKAR, JJ.**

DATE : 21/02/2020.

PC.:

. On 27/11/2019 this Court has passed following order:

“ At the outset, learned senior counsel for the petitioner no.1 states that the grievance of petitioner no.1 and his payer for discharge may be allowed to be looked into by the trial court in which chargesheet is already presented. Learned APP has no objection. Accordingly, keeping all contentions of petitioner no.1 open, we dispose of his challenge with liberty to him to raise it before the trial court.

2. As far as petitioner no. 2 is concerned, submission is he went out for study in August, 2008 and returned back to country in December, 2011. The offence is alleged to be in relation to the document dated 31/12/2010. By this order, change report submitted by the incoming trustees has been accepted. Petitioner no. 2 is one of the incoming trustees. That order has gone missing from the office of the complainant Charity Commissioner. Initially the offence under section 380 read with section 34 of IPC was

registered vide FIR No. 267 on 22/7/2016. After investigation the chargesheet is filed on 18/4/2017 and the offences shown are under sections 380, 419, 420, 465, 467, 218, 120B and section 201 IPC.

3. Learned APP submits that the summary filed in trial court along with chargesheet does not show that any proof of petitioner no. 2 not being in India during the said period was produced before the IO.

4. Learned senior counsel submits, that document has been filed as part of the present petition.

5. We have perused the photocopies of the said document. The summary does not show any specific role played by petitioner No.2 in the matter. Prima facie again impression is only because he is beneficiary, his name has been added as accused.

6. However, as the document like passport (which if correct may be seen as unimpeachable) has been produced, we grant the IO time of four weeks to look into it and to make appropriate statement.

7. List for further consideration on 13/1/2020.

8. Petitioner no. 2 to appear before the IO on 2/12/2019 with the original documents so as to enable the IO to investigate into the matter.”

2. Thereafter on 23/1/2020 following order was passed:

“1] In furtherance of orders dated 27th November, 2019, learned APP has produced report dated 13th January, 2020 which is taken on record and marked as Exhibit A. The report shows that from 16th September, 2008 to 31st December, 2011, the Petitioner was not in India.

2] FIR is registered in the year 2016 in relation to alleged

offence which has taken place in the year 2010.

3] Learned APP is seeking further time to make appropriate statement about impact of petitioner being out of India during the said period.

List on 6th February, 2020.”

3. Learned APP in the backdrop of last order and upon instructions from the investigating Officer states that the petitioner No.2 Ankit has not after his return to India acted as trustee or discharged any function as trustee.

4. This statement therefore shows that the petitioner No.2 has also not taken any advantage of alleged fraudulent document.

5. In this situation, the fact that he was not in India when alleged fraud was committed or then the fact that he has not taken advantage in any manner and is not functioning as trustee at all has been brought on record by the petitioner No.2.

6. We therefore make Rule absolute qua Ankit in terms of prayer clause (a). Consequential Criminal Case No.6200410/PW/17, Metropolitan Magistrate Court, Bhoiwad insofar as it relates to Ankit is also quashed and set aside.

7. The petition is accordingly allowed and disposed of.

(N. R. BORKAR, J.)

(B. P. DHARMADHIKARI, J.)