

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1291 OF 2020

Vilas Madhavarao Marathe,
Age : 52 years, Occu. Service,
R/o Near Saubhagya Mangal Karyalaya,
Shahada, Taluka Shahada,
District Nandurbar

PETITIONER

VERSUS

The State of Maharashtra

RESPONDENT

Mr. Amit S. Savale, Advocate for the Petitioner
Mr. S.W. Mundhe, A.P.P. for the respondent/State

CORAM : MANGESH S. PATIL, J.

JUDGMENT RESERVED ON : 10.02.2021
JUDGMENT PRONOUNCED ON : 23.02.2021

JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. The petitioner is invoking the powers of this Court under Articles 226 and 227 of the Constitution of India in assailing the concurrent orders of the two Courts below, refusing his request to direct an investigation under Section 156 (3) of the Code of Criminal Procedure ("Cr.P.C.", for short).

4. The petitioner filed Criminal Misc. Application No. 76/2019 in the Court of Judicial Magistrate First Class, Shahada with the allegations that the proposed accused took advantage of his friendship with them. They dishonestly and fraudulently induced him to periodically invest in a Chit Fund scheme in aggregate to the tune of Rs.15,30,000/- and refused to refund it and thus they committed the offences punishable under Sections 405, 406, 420 read with Section 34 of the Indian Penal Code. He also alleged that like him, few other persons were also similarly cheated and duped.

5. The learned Magistrate, observing that prima facie it was a dispute of civil nature and that the petitioner himself must be possessing necessary material to substantiate his allegations about periodical deposit of the amounts, refused the request to issue direction under Section 156(3) of the Cr.PC. Not satisfied with the order, the petitioner preferred Criminal Revision Application No.4/2019 before the Sessions Court under Section 397 of the Cr.PC. unsuccessfully.

6. The learned Advocate for the petitioner would submit that both the Courts below have committed a gross illegality in refusing to accept the innocuous request of the petitioner. Going by the allegations, all the necessary ingredients for constituting the offences, which are all cognizable, can be easily made out. Not only the petitioner but even few other persons have also been similarly duped and it was a fit case where the police

machinery could have been directed to carry out the investigation and recover the money. To some extent, though the petitioner may on his own establish the fact of making periodical payments, as far as recovery of money is concerned, it is the police machinery alone which would have been able to do it. Besides, when few other persons are also duped, the police officer alone would be able to trace them and vouch the fact based on their statements. Therefore, considering the serious nature of the crime, both the Courts below should have exercised the discretion vested in them, which they have refused to do and this Court should intervene in exercise of its constitutional powers.

7. The learned A.P.P. submits that the two Courts below have taken a plausible view and have merely refused to issue any direction for investigation. They have not shut the doors for the petitioner to independently lead evidence and substantiate his allegations. Therefore, there is no error or illegality committed by the Courts below and this Court may not intervene.

8. I have carefully considered the rival submissions. The common sense and the logic, apart from the wording of Section 156 of the Cr.P.C., would require such a power to be exercised by a Magistrate where the offence is cognizable and grave. The complexity of the modus operandi, recovery of weapons or property in respect of which the offence is committed, ability and competence of the person approaching the Magistrate

to establish all the necessary ingredients constituting the cognizable offences, etc., could be some such parameters which should regulate the powers of the Magistrate in directing investigation under Section 156 (3) of the Cr.P.C.

9. Simultaneously, the Magistrate also will have to exercise the powers under Section 156(3) of the Cr.P.C. bearing in mind the guidelines laid down by the Supreme Court in the case of *Priyanka Shrivastava and another Vs. State of Uttar Pradesh and others; (2015) 6 SCC 287*, particularly in paragraph Nos.26 and 27.

10. Going by the allegations being levelled by the petitioner, it is his case that the proposed accused, taking advantage of his friendship with them, dishonestly and fraudulently induced him to invest in the Chit Fund scheme but failed to keep the promise, which prima facie is indicative of the necessary ingredients for constituting misappropriation, criminal breach of trust and cheating, apart from the provisions of the Maharashtra Chit Fund Act, 1974 and/or Prize, Chits and Money Circulation Scheme (Prohibition) Act.

11. Both the Courts below failed to appreciate all the aforementioned facts and circumstances and have refused to exercise the power which the petitioner had called upon them to exercise.

12. Merely observing that the petitioner could have led evidence to prove his having deposited money periodically, they have overlooked the

other aspects of material, which could be collected only during investigation by a police officer under Section 156 of the Cr.P.C. The aspect of recovery of money has also been ignored, which the petitioner could not have done. Few other persons are alleged to have been duped in similar fashion and it would be only for the investigating machinery to verify the fact by recording statements of these witnesses and collecting material from them. The petitioner could not have been expected to do all these things.

13. Considering all the aforementioned facts and circumstances, the two Courts below have grossly erred in not directing the investigation under Section 156 (3) of the Cr.P.C. and the impugned orders are liable to be quashed and set aside. It also does not appear from the impugned orders as to if the two Courts below have borne in mind the principles laid down by the Supreme Court in the case of *Priyanka Shrivastava* (supra). Consequently, it would be appropriate to quash and set aside both the impugned orders and remit the matter back to the Magistrate for taking decision afresh bearing in mind all the aforementioned facts and circumstances and the law governing the field.

14. The Writ Petition is partly allowed. The impugned orders are quashed and set aside. Criminal Misc. Application No.76/2019 filed by the petitioner is remitted back to the concerned Magistrate for decision afresh.

15. The Rule is made absolute in above terms.

16. It is made clear that the observations made hereinabove are confined to the decision of the present Writ Petition and neither the Trial Court nor the Investigating Officer shall feel influenced by those.

[MANGESH S. PATIL]
JUDGE

npj/CRIWP1291-2020