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

WRIT PETITION NO. 4124 OF 2019

Kirti Zaveri & others ….Petitioners

...Vs...

The State of Maharashtra & one anr. ….Respondents.

Ms Sonal Parab, Advocate i/b Mr. Kiran N. Varma, Advocate for the Petitioner.

Dr. F. R. Shaikh, A.P.P. for respondent No.1.

None for respondent No.2.

CORAM: S.S. SHINDE & MANISH PITALE, JJ.

RESERVED ON: 15.03.2021.

PRONOUNCED ON: 20.04.2021.

JUDGMENT (Per : Manish Pitale, J.)

By this writ petition, the petitioners have invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and under section 482 of the Code of Criminal procedure for quashing MECR No.4 of 2019 registered with Juhu Police Station for alleged offences punishable under sections 406, 420, 120-B and 504 read with section 34 of the Indian Penal Code. The respondent No.2 is the informant, on whose complaint the aforesaid crime has been registered. The respondent No.2 had filed a complaint before the Metropolitan Magistrate under section 156(3) of the Code of Criminal Procedure and pursuant to order dated 19/03/2019 passed by the Magistrate, the said first information report stood registered.

2. The respondent No.2 was constrained to file the complaint under section 156(3) of the Code of Criminal Procedure before the Magistrate since information submitted before the Police did not result in any action on their part. Initially, the respondent No.2 had approached the Vile Parle Police Station, but he was informed that the jurisdiction would lie with Juhu Police Station. When no action was taken by the Juhu Police Station on the information submitted by the respondent No.2 and Higher Authorities also did not take any action, the respondent No.2 was constrained to file the aforesaid complaint. After perusing the contents of the complaint, the affidavit in support thereof and documents placed on record by the respondent No.2, the Magistrate passed the aforesaid order directing investigation into the matter.

3. The grievance of the respondent No.2 in brief is that he had been searching for residential flats for purchase when he came in contact with the petitioners. On the basis of the representations given by the petitioners, who are into the business of real estate and property development, the respondent No.2 booked two flats bearing Flat No.302 and Flat No.802 in a proposed building called "Air-View Cooperative Housing Society Ltd.". The respondent No.2 was told by the petitioners that the amounts towards purchase of the said flats would have to be paid in the name of a firm called as M/s. Anmol Alliance, which was a sister concern of the petitioners. Accordingly, the respondent No.2 claimed to have paid a huge amount of Rs.3,92,00,000/- for both the flats from April, 2016 to November, 2017. It was further stated in the complaint that the petitioner No.1 executed an agreement to sell in respect of the said flats with the respondent No.2 and he stated that possession of the flats would be handed over as soon as the occupancy certificate was obtained. According to the respondent No.2, in order to further give assurance to him, the petitioners executed a registered power of attorney in favour of one Mr.Deepak Waghani, a person known to the respondent

No.2, for appearing before the competent authority for execution and registration of sale deed.

4. The specific grievance of the respondent No.2 was that despite payment of the entire amount of consideration, when he approached the petitioners for execution of sale deed, they avoided to do so on the pretext that the occupancy certificate was yet to be received. They allegedly stopped taking his calls and avoided him completely. It was in August, 2018 that the respondent No.2 became aware that the aforesaid flats were mortgaged to Federal Bank Financial Services Ltd. in the year 2017 itself, due to which the respondent No.2 realized the fraud played upon him. He further stated that the Police failed to take appropriate action in the matter and therefore, he was constrained to file complaint under section 156 (3) of the Code of Criminal Procedure. The said complaint was supported by an affidavit and bank statements as well as other documents were annexed therewith. Upon considering such material, the Magistrate on 19/03/2019, passed an order under section 156(3) of the Code of Criminal Procedure for taking cognizance of the said complaint and directed investigation into the matter. Consequently, the said MECR dated 25/04/2019 was

registered at Juhu Police Station against the petitioners and others.

5. The petitioners have filed this petition claiming that the MECR stood registered against them at the behest of the said Deepak Waghani, who had in fact invested certain amounts with the petitioners. It is claimed that since there were some amounts that were due to be paid by the petitioners to the said Mr.Waghani, he had misused certain documents signed and executed in good faith by the petitioners to prop up the respondent No.2 for registration of the criminal case against them. It was submitted that a purely civil dispute was sought to be converted into a criminal case, which ought not to be permitted in the interest of justice.

6. Ms Sonal Parab, learned counsel appearing for the petitioners, submitted that in the present case, the criminal justice system was wrongly triggered for registration of offence against the petitioners as a purely civil dispute was sought to be converted into a criminal case. On the basis of the statements made in the writ petition and documents filed therewith, the learned counsel

for the petitioners submitted that the criminal process was wrongly being used for recovery of certain amounts from the petitioners. It was submitted that the petitioners had no direct contact with the respondent No.2 herein and that they had interacted only with the said Mr. Waghani, who had now propped up the respondent No.2 to initiate a false criminal case against them. Apart from this, it was vehemently submitted that the Magistrate in the present case had mechanically and without any application of mind exercised power under section 156(3) of the Code of Criminal Procedure to initiate investigation and registration of the MECR against the petitioners. It was submitted that the settled law pertaining to the manner in which power under section 156(3) of the Code of Criminal Procedure is to be exercised, was violated in the present case and that therefore, the present writ petition deserved to be allowed. The learned counsel for the petitioners placed reliance on judgments of the Hon'ble Supreme Court in the case of ***Priyanka Srivastava and anr. v. State of U.P. and oths.***, reported in ***(2015) 6 SCC 287***, ***Thermax Limited & oths. v. K.M. Johny and oths.***, reported in ***(2011) 13 SCC 412*** and ***Anand Kumar Mohatta and anr. v. State (NCT of Delhi), Department of Home and anr.***, reported in ***(2019) 11 SCC 706***.

7. Dr. F. R. Shaikh, learned APP appeared for the respondent No.1-State and tendered copies of the investigation papers. He submitted that the Magistrate had properly exercised power in the present case and that, since ingredients of the offences in question were *prima facie* made out, there was no error in the order passed by the Magistrate leading to registration of the MECR.

8. The learned APP specifically brought to the notice of this Court that there were three other criminal cases registered against the petitioners for offences punishable under sections 406, 409 and 420 of the Indian Penal Code, where other persons were also similarly duped by the petitioners. On this basis, the learned APP submitted that the writ petition deserved to be dismissed.

9. A perusal of the complaint filed by the respondent No.2 in the present case and the order passed by the learned Magistrate under section 156(3) of the Code of Criminal Procedure, shows that the complaint was supported by an affidavit and documents relevant for the grievances raised in the complaint were placed on record on behalf of respondent No.2. The contents of the com-

plaint, as also the documents filed therewith, show that the respondent No.2 had indeed transferred huge amount into the account of the sister concern in which the petitioners were partners. It is also found that despite transfer of such huge amounts and execution of registered agreement to sell, the flats in question were never transferred in favour of the respondent No.2.

10. The learned Magistrate has referred to the complaint as also the affidavit in support and the documents annexed, to hold that *prima facie* the aforesaid offences stood disclosed against the petitioners. In fact, the learned Magistrate has also referred to acknowledged copy of Police complaint, placed on record by the respondent No.2. It was found by the Magistrate that the material on record was self-speaking indicating cheating and criminal breach of trust. On this basis, the order dated 19/03/2019 was passed by the Magistrate, leading to registration of the MECR against the petitioners.

11. A perusal of the aforesaid material on record shows that reliance placed by the learned counsel for the petitioners on the judgments of the Hon'ble Supreme Court in the cases of ***Priyanka***

Srivastava and anr. v. State of U.P. and oths., ***Thermax Limited & oths. v. K.M. Johny and oths.*** and ***Anand Kumar Mohatta and anr. v. State (NCT of Delhi), Department of Home and anr.*** (*supra*), can be of no assistance. This is for the reason that the complaint was supported by affidavit of the respondent No.2. The contents of the complaint disclosed the manner in which the respondent No.2 claimed to have been cheated by the petitioners. The Magistrate took note of the complaint, the affidavit and the documents on record to come to a *prima facie* conclusion that ingredients of the offences were made out and thereupon directed investigation into the matter. Insofar as the aspect of the dispute between the parties being of purely civil nature, suffice it to say that certain set of facts may give rise to grievances of civil and criminal nature both. As long as *prima facie* ingredients of the alleged offences are made out, it cannot be said that the Magistrate committed a jurisdictional error in passing the order dated 19/03/2019, for registration of first information report and investigation into the matter by exercising power under section 156(3) of the Code of Criminal Procedure.

12. We have perused the documents on record and we feel that at this stage, the attempt of the petitioners to push the blame on Mr.Waghani can be of no avail because the respondent No.2 has raised specific grievances against the petitioners, placing on record the fact that huge amounts were transferred through bank transactions with the petitioners and admittedly, the flats in question were not transferred in the name of the respondent No.2.

13. The investigation papers brought to the notice of this Court by the learned APP further show that not only was the grievance of the respondent No.2 justified that the very flats agreed to be sold to him, were mortgaged in the year 2017 by the petitioners with another entity, but investigation revealed that the two flats were sold to two different individuals in the year 2019. The statements of the individuals, who purchased those flats from the petitioners in the year 2019, have been also recorded during the course of investigation by the Police. This *prima facie* shows serious ingredients of the said offences committed the petitioners.

14. Apart from this, another significant aspect of the matter brought to the notice by the learned APP is that there are three

other crimes registered against the petitioners concerning offences punishable under sections 406, 409 and 420 of the Indian Penal Code in Bandra, D.N. Nagar and Amboli Police Stations against the petitioners. Therefore, it is clear that allegations have been made by other aggrieved persons, claiming that they have also been duped in a manner similar to the allegations levelled by the respondent No.2 in the present case. The criminal antecedents of the petitioners further disqualify them from claiming any relief from this Court exercising extraordinary writ jurisdiction under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure.

15. We are of the opinion that the material on record is sufficient to indicate that *prima facie* the ingredients of the alleged offences are made out against the petitioners and that the present case warrants full investigation into the matter, so that an appropriate report is submitted by the Investigating Officer before the concerned Magistrate.

16. In view of the above, we find no substance in the present writ petition and accordingly, it is dismissed. The observations made hereinabove are prima facie in nature and confined to the adjudication of the present Writ Petition.

(MANISH PITALE, J.) **(S.S.SHINDE, J.)**