

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

933 CRIMINAL WRIT PETITION NO.816 OF 2022

- 1 Ashok Suryabhan Dange,
Age 56 yrs., Occ. Service,
 - 2 Sou. Bebi Ashok Dange,
Age 50 yrs., Occ. Household,
- Both are r/o Puntamba, Tq. Rahata,
Dist. Ahmednagar.

... **Petitioners**

... **Versus** ...

- 1 The State of Maharashtra,
Through the officers of
Shrirampur City Police Station,
Tq. Shrirampur, Dist. Ahmednagar.
- 2 Vishal Prakash Pawar,
Age 41 yrs., Occ. Business,
R/o Saraswati Colony, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.

... **Respondents**

...

Mrs. Rashmi S. Kulkarni, Advocate for the petitioners

Mr. S.D. Ghayal, APP for respondent No.1

Mrs. Sunita G. Sonawane, Advocate for respondent No.2

...

**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 21st SEPTEMBER, 2022

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 Present petition has been filed by the original accused Nos.6 and 7 invoking the constitutional powers of this Court under Article 226 of the Constitution of India to challenge order passed by learned Additional Sessions Judge, Shrirampur on 19.05.2022 in Criminal Revision Application No.3/2022 as well as for the quashment of the First Information Report bearing Crime No.380/2022 dated 01.06.2022 registered with Shrirampur City Police Station, Dist. Ahmednagar, for the offence punishable under Section 120-B, 406, 420 of the Indian Penal Code, 1860, in view of the said order passed by the learned Additional Sessions Judge, Shrirampur.

3 Heard learned Advocate Mrs. Rashmi S. Kulkarni for the petitioners, learned APP Mr. S.D. Ghayal for respondent No.1 and learned Advocate Mrs. Sunita G. Sonawane for respondent No.2.

4 The brief facts in the nutshell are that - accused Nos.1 and 2 were the partners in the business under the name and style "C.C. Traders".

Their business was trading in crepto currency. It was alleged that the accused No.5 and the present petitioner No.1 were known to respondent No.2 and they had convinced respondent No.2 to invest his amount with accused Nos.1 and 2, as a result of which he would get good returns. Relying upon the said assurance it is stated that respondent No.2 visited the office of accused Nos.1 and 2, who had then given assurance that since they are trading since 2003 and now entered into the crepto trading in 2015, they would give good returns for the investment. According to the respondent No.2, he had invested amount of Rs.22,84,500/-. Accused Nos.1 and 2 are stated to have returned amount of Rs.8,64,564/- to him and gave post dated cheques in lieu of the assured returns. However, those cheques on their presentation got dishonoured. Even a notarized agreement is stated to have been entered on 26.02.2019 assuring the returns. Therefore, according to the respondent No.2, he has been cheated by accused Nos.1 and 2. He filed complaint application with the Police Station, however, since no cognizance was taken he filed private complaint bearing Criminal Miscellaneous Application No.275/2021 in the Court of learned Judicial Magistrate First Class, Shrirampur on 22.07.2021. The prayer of respondent No.2 sending the matter for investigation under Section 156(3) of the Code of Criminal Procedure was rejected by the learned Judicial Magistrate First Class, Shrirampur on 24.12.2021. Taking into consideration that the matter is

mainly of civil in nature the complainant – respondent No.2 challenged the said order in Criminal Revision No.3/2022 in the Court of learned Additional Sessions Judge, Shrirampur. The order passed by the learned Judicial Magistrate First Class, Shrirampur was quashed and set aside and revision came to be allowed. Learned Additional Sessions Judge, Shrirampur directed the police to register the First Information Report. The petitioners herein contend that they were not issued notice by the learned Additional Sessions Judge in respect of the criminal revision application.

5 Learned Advocate for petitioners has relied on following cases :

- 1) **Kailash Dattatraya Jadhav and others vs. State of Maharashtra and others** [2017 ALL M.R. (Cri.) 1647];
- 2) **Shankar and others vs. The State of Maharashtra and others** [2018 ALL M.R. (Cri.)135];
- 3) **Devidas and others vs. The State of Maharashtra and others** [2018(2) Bom C.R. (Cri.)185];
- 4) **Anand Kumar Mohatta and others vs. State (Govt. of NCT of Delhi) Department of Home and others** [AIR 2019 SC 210];
- 5) **Hridaya Ranjan Pd. Verma and others vs. State of Bihar and others** [AIR 2000 SC 2341]; and

6) **G. Sagar Suri and others vs. State of U.P. and others** [AIR 2000 SC 754].

We are mainly concerned with the decision of this Court in **Shankar and others** (supra) by this Court, wherein it has been held that in case of revision challenging the order under Section 156(3) of the Code of Criminal Procedure by the complainant; accused are entitled to be heard in the said revision. The other decisions are mainly on the point of what should be the compliance for considering the application under Section 156(3) of the Code of Criminal Procedure.

6 Per contra, the learned APP for respondent No.1 and learned Advocate for respondent No.2 supported the reasons given by the learned Additional Sessions Judge in the revision.

7 Before we could consider the said submissions it has been brought to our notice that co-accused Nos.1 to 4 had challenged the same criminal revision in Criminal Writ Petition No.880 of 2022, which had not included the prayer for quashment of the First Information Report and, therefore, it was entertained by the learned Single Judge of this Court and by order dated 02.08.2022 the impugned order dated 19.05.2022 passed in Criminal Revision Application No.3/2022 by the learned Additional Sessions

Judge, Shrirampur, Dist. Ahmednagar has been quashed and set aside. Learned Additional Sessions Judge, Shrirampur has been directed to decide Criminal Revision Application No.3/2022 afresh, after giving an opportunity of being heard to the petitioners. Now, the basic question is that the order on the basis of which the First Information Report vide Crime No.380/2022 was registered with Shrirampur City Police Station has been set aside. That may not *per se* quash and set aside the First Information Report, because the impugned order has been set aside, but the revision has been directed to be heard by the learned Additional Sessions Judge afresh. Therefore, balance will have to be struck in this case.

8 It was orally submitted on behalf of learned APP as well as learned Advocate for respondent No.2 that they had brought to the notice of the learned Single Judge that this Criminal Writ Petition has been filed by co-accused and it is before this Division Bench. The present petitioners were not before the learned Single Judge and, therefore, we say that a balance will have to be struck, in view of the order that has been passed by the learned Single Judge. When the base, that is, order dated 19.05.2022 which was under challenge in this petition as well as in Criminal Writ Petition No.880 of 2022 has been set aside then, we will have to quash and set aside the First Information Report vide Crime No.380/2022, however, then, as directed by

the learned Single Judge the revision will have to be heard by the learned Additional Sessions Judge and it should be decided on its merits by giving opportunity to the petitioners in Criminal Writ Petition No.880 of 2022 as well as the present petitioners. Learned Additional Sessions Judge ought to have considered the ratio laid down by this Court in **Shankar and others** (supra). This Court in **Shankar and others** (supra) has, in fact, relied on the decision in **Raghu Raj Singh Rousha vs. Shivam Sundaram Promoters Private limited and another** [(2009) 2 SCC 363] and taking into consideration the provisions under Section 397, 399 and 401 of the Code of Criminal Procedure it was held that - *“Even when revision is preferred against the order of a Magistrate refusing to direct investigation under Section 156(3) of the Code of Criminal Procedure, the proposed accused/suspects are entitled to be heard in the revision preferred by the complainant and in the absence of such opportunity the decision in the revision adversely affecting them will not be sustainable in law.”* In view of these developments the writ petition cannot be fully allowed. It will have to be partly allowed and the directions are required to be given to the learned Additional Sessions Judge to re-hear the criminal revision by giving the opportunity of hearing to all the suspects/accused in the case.

ORDER

1 The writ petition stands partly allowed.

2 The First Information Report bearing Crime No.380/2022 dated
01.06.2022 registered with Shrirampur City Police Station, Shrirampur, for
the offence punishable under Section 120-B, 406, 420 of the Indian Penal
Code, 1860 stands quashed and set aside.

3 The order passed by learned Additional Sessions Judge,
Shrirampur on 19.05.2022 in Criminal Revision No.3/2022 has already been
quashed and set aside in Criminal Writ Petition No.880 of 2022 by this Court.
Hence, no separate order.

4 In view of the directions issued by this Court in Criminal Writ
Petition No.880 of 2022 to the learned Additional Sessions Judge,
Shrirampur to decide Criminal Revision Application No.3/2022 afresh, by
giving an opportunity to those petitioners; similarly the present petitioners
also be heard by the learned Additional Sessions Judge in the said revision.

5 Rule is made absolute accordingly.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)

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