

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

CRIMINAL WRIT PETITION NO.4201 OF 2022

1. Prafulbhai Dwarkadas Vakharia
 2. Hitesh Vinubhai Mody
 3. Dharmendra P. Vakharia
 4. Jasmin Prabhudas Kothari
 5. Sunil Pranjivan Rajgor ...Petitioners
- Versus
1. The State of Maharashtra
 2. Harshad Manilal Parekh ...Respondents

Mr. Sudeep Pasbola a/w Mr. Ayush Pasbola, Mr. S. C. Mishra, Mr. Sankalp Vichare, Mr. Aadesh Konde-Deshmukh, i/b Mr. Vaibhav N. Jagtap, for the Petitioners.

Ms. P. P. Shinde, A.P.P for the Respondent No.1– State.

Ms. Sultana Sonawane, for the Respondent No.2.

***CORAM : REVATI MOHITE DERE &
R. N. LADDHA, JJ.***

DATE : 1st DECEMBER 2022

P.C. :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives

notice on behalf of the respondent No.1–State. Ms. Sonawane waives notice on behalf of the respondent No.2.

3. By this petition, preferred under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, the petitioners seek quashing of the FIR bearing M.E.C.R No.5 of 2013, registered with the Ghatkopar Police Station, Mumbai, for the alleged offences punishable under Sections 193, 199, 200, 420, 465, 468, 471 r/w 120B of the Indian Penal Code. Quashing is sought on the premise, that the parties have amicably settled their dispute.

4. Perused the papers. It appears that the original accused No.1 – Vinubhai Mody, the petitioner No.1 – Prafulbhai Vakharia and the respondent No.2 were all Trustees of a Trust by the name of Seth Dayabhai Odhavji Vanik Niwas Trust (hereinafter referred to as 'the said Trust'). According to the respondent No.2, the original accused No.1 – Vinubhai Mody and the petitioner No.1 introduced their sons

i.e. the petitioner Nos.2 and 3 respectively as Trustees of the said Trust, which was seriously objected to, by the respondent No.2. The respondent No.2 has alleged that the original accused No.1 – Vinubhai Mody, who was the reporting Trustee had submitted Change Report to the Charity Commissioner, which was allegedly forged and fabricated. According to the respondent No.2, a forged affidavit dated 3rd December 2011 was filed before the Charity Commissioner, to obtain a favourable order. It was also alleged that the Minutes of the Meeting held by the Trustees, was altered/changed. Pursuant thereto, the respondent No.2 filed a private complaint in the Court of the learned Additional Chief Metropolitan Magistrate, 49th Court, Vikhroli, Mumbai and prayed for an order under Section 156(3) of the Code of Criminal Procedure. Pursuant to the order passed by the learned Magistrate, under Section 156(3) Cr.PC, the police of the Ghatkopar Police Station, lodged the aforesaid MECR, as against the petitioners, alleging the aforesaid offences. As far as the petitioner Nos.4 and 5 are concerned, the said petitioners were employed with the said Trust, at the relevant time and they too were arraigned as

accused in the said complaint. After investigation, charge-sheet was filed in the said case and the case is presently pending before the learned Metropolitan Magistrate, 49th Court, Vikhroli, Mumbai, being Case No.666/PW of 2017.

5. During the pendency of the aforesaid proceeding, the original accused No.1 – Vinubhai Mody expired on 25th August 2020. Since the respondent No.2 had essentially made allegations, as against the original accused No.1 – Vinubhai Mody, thereafter, the parties amicably settled their dispute and entered into an Memorandum of Understanding ('MOU'). The said MOU is at Exhibit – 'D', on page 72 of the petition. In addition thereto, the respondent No.2 has also filed his affidavit giving his no objection to the quashing of the complaint/proceeding. The said affidavit is at Exhibit – 'E', on page 90 of the petition. In the said affidavit, the respondent No.2 has stated that he was appointed as a Trustee of the said Trust on 2nd November 1972 and the petitioner No.1 continued to be a Trustee of the said Trust, since 1975. It is stated that the original accused No.1 –

Vinubhai Mody was appointed as a Trustee in 1978 and that he expired on 25th August 2020. The respondent No.2 in his affidavit has further stated that a meeting came to be held on 3rd May 2012 and that in the said meeting, he was removed as a Trustee from the said Trust. According to the respondent No.2, two Change Reports were filed before the Office of the Charity Commissioner, Mumbai, for approval; one Change Report was with respect to appointment of two new Trustees i.e. the petitioner Nos. 2 and 3 and other Change Report was with respect to his removal i.e. the respondent No.2's removal as a Trustee from the said Trust. He has stated that in view of the disputes and differences between the parties, he filed the aforesaid private complaint, as against the petitioners, alleging the aforesaid offences. It is a matter of record that the Assistant Charity Commissioner did not accept the Change Report, inducting petitioners Nos.2 and 3 as new Trustees and in the other Change Report, it was held that the respondent No.2's removal from the said Trust, was illegal. It appears that the proceedings filed subsequent thereto, were withdrawn by both the parties against each other, pursuant to the MOU entered between

the parties. In the said affidavit, the respondent No.2 has given his no objection for quashing of the aforesaid MECR, registered with the Ghatkopar Police Station, Mumbai and consequently the proceeding pending before the learned Metropolitan Magistrate, 49th Court, Vikhroli, Mumbai, being Case No.666/PW of 2017. Respondent No. 2 is present in Court. On questioning, he re-iterates what is stated by him in his affidavit. Learned counsel for the respondent No. 2 has tendered a self attested photocopy of the aadhar card of the respondent No. 2. The same is taken on record. Learned Counsel for the respondent No.2 has identified the respondent No.2 and the learned APP has also verified the original aadhar card of the respondent No.2.

6. Both the parties do not dispute the fact that there are no findings/observations recorded by the Charity Commissioner with respect to the alleged forgery or fabrication of documents in the order passed and hence *prima facie*, it is doubtful, whether the Sections alleging forgery/fabrication are made out, *qua* the petitioners.

7. Considering the nature of allegations, the fact that the parties have amicably settled their dispute and have entered into an MOU, the affidavit of the respondent No.2 and having regard to the age of the parties, we do not find any impediment in allowing the petition.

8. The petition is accordingly allowed and the FIR bearing MECR No.5 of 2013, registered with the Ghatkopar Police Station, Mumbai, is quashed and set aside and consequently the proceeding pending before the learned Metropolitan Magistrate, 49th Court, Vikhroli, Mumbai, being Case No.666/PW of 2017, is also quashed and set aside.

9. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

10. Learned Counsel for the respondent No.2 to file her Vakalatnama, if not filed, on behalf of the said respondent, in the registry, within two weeks of uploading of this order.

11. All concerned to act on the authenticated copy of this order.

R. N. LADDHA, J.

REVATI MOHITE DERE, J.