IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 195 OF 2023

1. Tejshree d/o Vijay Nandekar
   Aged about 24 years,
   Occ.: Education, R/o. Plot No.73,
   Arya Nagar, Samta Nagar Road,
   Near Manmite Lawn, Nagpur.

2. Vinayak s/o Jairaj Naidu
   Aged about 25 years,
   Occ.: Education, R/o. Plot No.264,
   Misal Lay-out, Near Maharashtra School,
   Jaripatka, Nagpur.

... Petitioners

Versus

1. State of Maharashtra
   Through its Commissioner of Police,
   Nagpur City, Nagpur.

2. P.S.O. Jaripatka Police Station,
   Jaripatka, Nagpur.

3. Chirag Ajay Bansod
   Aged about 22 years,
   Occ.: Student,
   R/o. Bezanbagh, Zinger Mall,
   Jaripatka, Nagpur.

... Respondents

Mr. Santosh Chande, Advocate h/f Mr. Raju Kadu, Advocate for petitioners.
Mr. N.R. Rode, APP for respondent Nos.1 & 2.

CORAM : VINAY JOSHI, AND
VALMIKI SA MENEZES, JJ.

RESERVED ON : 08.08.2023

PRONOUNCED ON : 11.08.2023

JUDGMENT: (PER: Valmiki Sa Menezes, J.)

This writ petition under Article 226 of the Constitution of India seeks directions to the Commissioner of Police, Nagpur City (respondent No.1) and to the PSO, Jaripatka Police Station, Nagpur (respondent No.2) to re-investigate a criminal case under FIR No.185/2022 lodged by the petitioners on 22.03.2022. Mr.N.R. Rode, learned APP has waived service for respondents Nos.1 and 2 and with his consent, the matter has been disposed of at the stage of admission. Considering the sensitive nature of the matter, which deals with further investigation against the accused, respondent No.3, and considering the order which we propose to make, we have disposed this petition without notice to respondent No.3. For the order, which we proposed to make no right of hearing could be claimed by the respondent No.3 before further investigation is ordered.

Rule. Heard finally by consent of the learned counsel for the petitioners and for respondent Nos.1 and 2.

(2) It is the petitioners' case in the FIR that the respondent No.3 has induced the petitioner with a dishonest intent of cheating the petitioners to part with large sums of money, on the claim that he would invest the same in speculative stock transactions, to be conducted through stock trading platform Zerodha ; further, that the accused has infact not invested these amounts in the name of the petitioners, and has siphoned of these funds, thus committing offences of cheating and criminal breach of trust punishable under Sections 420 and 406 of the Indian Penal Code.

(3) On an investigation being conducted by respondent No.2, a charge-sheet/final report came to be filed bearing No.180/2022 dated 29.08.2022, which is presently pending before the 15^{th} Jt. Civil Judge Junior Division and Judicial Magistrate First Class, Court No.18, Nagpur under Regular Criminal Case No.3712/2022.

(4) It is the petitioner's case that many lapses have been committed during the course of the investigation such as not seizing the bank accounts of the accused, not attaching his laptop or other electronic equipment wherein he may have recorded various transactions undertaken by him ; further, that whatsapp conversations on the phone of the accused with the petitioners or any other persons, on whom, he may have committed similar acts of cheating, were not investigated, so also the angle that the accused was neither an authorized broker or empowered to trade on behalf of the complainant, was not properly investigated. It is further the petitioners case that the entire investigation ought to have been conducted by an agency which had the tools and necessary know-how to investigate an economic offence and cyber crime, since a large part of the transactions were electronically performed, done online or by fraudulently changing the complainants passwords.

(5) We have perused the FIR, charge-sheet and the entire material collected by the respondent No.2 during the investigation, which includes statements of the complainant and various witnesses. A perusal of the material collected leaves us with an impression that the investigating agencies have not probed into the various transactions that the accused indulged in, more particularly, on the aspect of whether any trading has taken place at the behest of the accused on the Zerodha trading platform or any other trading platform using the petitioners funds or funds belonging to any other innocent investors. There are allegations that the accused had represented to the complainants that he had received e-mails from “Team Zerodha” and could make huge profits for the complainants if they transferred their money to the accused for investment ; there is also an allegation that by misrepresenting to the complainants, the accused has procured the password and login Id of the petitioner No.2 for his demat account and has thereafter reset these passwords and has cleared out all the funds of the petitioners deposited in the account connected to this demat/trading account. Further, there is an allegations that the accused has represented that he was also dealing in cryptocurrency, in which, he claimed the complainants funds could be invested.

(6) It appears to us that with the accusations made in the complaint and the basic material collected by the investigation agencies, which are bank accounts of the petitioner No.2, copies of cheques issued by the petitioners to the accused and bank account statements of the petitioner No.1, there appears to be no detailed investigation conducted into the specific allegations made by the petitioners. It stands to reason that in an investigation of this nature, equipment such as laptops, computers or storage devices belonging to the accused ought to have been attached and examined, the bank accounts of the accused ought to have been seized and the various transactions and the transaction trail left in these records of the accused ought to have been investigated. The investigation, it stands to reason, should have also been from an angle to ascertain whether the accused had done similar transactions and duped more persons with a similar *modus operandi.* Further, the allegation that the accused may have dealt with investments in cryptocurrency or stock trading should have also been investigated, including, by checking whether the accused had any links with Zerodha platform or any other stock trading platform. We notice that the respondent No.2 has not investigated the matter from this angle, and has filed a final report which may be inadequate.

(7) Considering all these aspects of the matter, we are of the view that there is need for a further and deeper investigation to be conducted into the Crime No.185/2022 dated 22.03.2022 which was registered with Jaripatka Police Station, Nagpur City, Nagpur and such investigation is required to be done by a Specialized Agency such as the Economic Offences Wing of the Police or Cyber Crime Branch. In that view of the matter, we pass the following directions :-

(a) The Commissioner of Police, Nagpur City, shall direct the Economic Offences Wing and/or

Cyber Crime Branch operating under him, to conduct further investigation into FIR No.185/2022 dated 22.03.2022, filed before the Jaripatka Police Station, Nagpur City, and consider various aspects of the matter referred to by us in para 6 above; the further investigation may involve attachment of laptops or other devices belonging to the accused or any other persons connected to him, conducting forensic evaluation of data in these devices, freezing or attaching of bank accounts, demat accounts or trading accounts, investigating bank transactions trails with regard to the accounts of the accused and further investigation into the allegation of the accused involvement in trading of cryptocurrency.

(b) On completion of such further investigation, which shall be undertaken within a period of three months of this order, the respondent No.1 or such agency who is entrusted with further investigation, may, if the investigation so justifies, file a supplementary or additional charge-sheet before the concerned Magistrate.

(c) We direct the concerned 15th Jt. Civil Judge Junior Division and Judicial Magistrate First Class, Court No.18, Nagpur, to stay further proceedings in Crime No.185/2022 and charge-sheet No.180/2022 dated 29.08.2022, and RCC No.3712/2022, for a period of three months, and the trial in this case may proceed thereafter, with or without the supplementary charge-sheet.

(8) Rule is made absolute in terms of the above directions.

[VALMIKI SA MENEZES, J.] [VINAY JOSHI, J.]

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