



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

CRIMINAL WRIT PETITION NO.516 OF 2024

Adv. Baburao S/o Shankarrao Baviskar,
Age-78 years, Occu:Legal Practitioner,
R/o-222, N-3 Sector, CIDCO,
Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
- 2) The Commissioner of Police,
Aurangabad,
- 3) The Police Inspector,
Osmanpura Police Station,
- 4) Vitthal S/o Nanasaheb Jogdand,
Age-Major, Occu:Service,
R/o-C/o- Aurangabad Dist. Central
Cooperative Bank, Adalat Road,
Aurangabad,
- 5) Datta S/o Ragnathrao Kadam,
Age-Major, Occu:Medical Practitioner,
R/o-C/o-Dhanvantari Hospital,
Near Cosmos Bank, Shriniketan Colony,
Aurangabad.

...RESPONDENTS

...
Mr. Nilesh S. Ghanekar Advocate for Petitioner.
Mr. G.A. Kulkarni, A.P.P. for Respondent Nos. 1 to 3.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 28th AUGUST, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Petition has been filed invoking the constitutional powers under Article 226 and 227 of the Constitution of India and inherent powers under Section 482 of the Code of Criminal Procedure for seeking directions for further investigation in R.C.C. No.690 of 2007 for the offence punishable under Section 120-B, 405, 420, 463, 465, 468, 471, read with Section 34 of the Indian Penal Code registered with Osmanpura Police Station, Aurangabad.

2. Heard learned Advocate Mr. Ghanekar for the petitioner and learned APP Mr. Kulkarni for respondent Nos.1 to 3.

3. Learned Advocate for the petitioner submits that the petitioner is the complainant. His wife Sandhya is one of the founder members of Shri Shivneri Sahakari Gruh Nirman Sanstha Ltd., Nakshatrawadi, Aurangabad. The petitioner had filed application under Section 156(3) of the Code of Criminal Procedure for investigating the offence. The facts were that the society came to be registered with 20 members in 1989. The society had purchased six acres of land at Nakshatrawadi area,

out of the funds raised by the members in 1985. Thereafter society came to be registered in 1989. Most of the members of the said society are doctors, pleaders and other high positioned members. Accused No.1 was the chairman and accused No.2 was the secretary of the said society. The accused persons along with some other members, illegally sold the entire land of six acres of the society and it was not even informed to its members including the wife of the petitioner. Without informing them a false proceedings of special general body meeting was prepared on 20th February 2003, wherein it was shown a resolution to sell the land has been passed by the society. In fact wife of the complainant – petitioner and one Dr. D.B. Kadam and some other members were not present in the meeting. Their signatures were forged on the proceedings. Thus the accused persons have committed offence of cheating, misappropriation, criminal breach of trust etc. After the Magistrate had passed the order of investigation under Section 156(3) of the Code of Criminal Procedure, the police were supposed to carry out the investigation properly, however, the investigation carried out was perfunctory. Even the charge-sheet came to be filed on 10th June 2008. The accused persons had filed Criminal Writ Petition No.118 of 2008 for quashing the proceedings. However, they had

withdrawn the said petition. Thereafter the petitioner had applied the Commissioner of Police with a request to carry out further investigation and all the lacunas were brought to the notice of the Commissioner of Police. The petitioner then filed application under Section 173(8) of the Code of Criminal Procedure, which came to be allowed. However, respondent Nos.4 and 5 filed Criminal Writ Petition No.729 of 2013 which came to be withdrawn with liberty to file revision application. Thereupon respondent Nos.4 and 5 had filed criminal revision No.191 of 2013 before the learned Sessions Judge, Aurangabad. Learned Sessions Judge, Aurangabad quashed and set aside the order of further investigation by Judgment and order dated 4th August 2014. The petitioner filed Criminal Writ Petition No.1369 of 2014 seeking the quashing of the order passed by the learned Sessions Judge. In fact the petitioner is having right for proper investigation. If prima facie there appears perfunctory investigation and investigating officer has deliberately avoided certain material to be brought on record, then such right ought not to have been denied. Learned Advocate for the petitioner tried to demonstrate as to how the investigation is not proper in this case. It is then stated that said Criminal Writ Petition No.1369 of 2014 came to be withdrawn by order dated 18th

February 2015. His another Criminal Writ Petition No.412 of 2015 was also not entertained. However, in view of recent Judgment of the Hon'ble Supreme Court in ***Vinubhai Haribhai Malaviya and others vs. State of Gujarat and another in Criminal Appeal Nos. 478-479 of 2017***, decided by the Three Judge Bench of the Hon'ble Supreme Court on 16th October 2019, the petitioner/complainant has every right to demand further investigation and therefore, the present Petition has been filed.

4. Heard learned APP for respondent Nos. 1 to 3. It is not even necessary to issue notice to other respondents.

5. The first and foremost fact to be noted is that the present Petition suffers from delay and laches. Proceedings before the learned Magistrate are pending since 2007 and still the petitioner is making complaints about the further investigation. The rights of the accused are also required to be considered at the same time. The accused have also right of speedy justice. What prevented the concerned Court from proceeding with the matter after the revision was allowed on 4th August 2014, is a question. No doubt in ***Vinubhai Haribhai Malaviya and others*** (supra) the Hon'ble Supreme Court has made the law clear and observed

that even the accused has no right to participate in the investigation till process is issued to him, provided there is strict compliance of the requirements of fair investigation. But it has been held that the Magistrate has powers to direct further investigation. To the extent the Judgments in *Amrutbhai Shambubhai Patel vs. Sumanbhai Kantibai Patel (2017) 4 SCC 177*, *Athul Rao vs. State of Karnataka and another (2018) 14 SCC 298* and *Bikash Ranjajn Rout vs. State through the Secretary (Home), Government of NCT of Delhi, (2019) 5 SCC 542* were held to be contrary and were overruled. The decisions in *Randhir Singh Rana vs. State (Delhi Administration), (1997) 1 SCC 361* and *Reeta Nag vs. State of West Bengal and others (2009) 9 SCC 129* were also held to be overruled. Taking into consideration the fact that the trial was stayed by the Hon'ble Apex Court and taking into consideration the further developments in the form of communication of Commissioner of Revenue, directions were given to the police to register the FIR and it was stated that the trial shall not commence until the police report is submitted in the FIR to be lodged by the police pursuant to the said Judgment.

6. Therefore, as regards the powers are concerned, definitely

those are there and when in this case the petitioner wants to rely upon the said Judgment of the Hon'ble Apex Court in *Vinubhai Haribhai Malaviya and others* (supra), dated 16th October 2019, then why the petitioner had not approached this Court immediately, is a question. We do not find any reason given in the Petition as to why the petitioner is coming to this Court belatedly i.e. in the year 2023. The petitioner is in fact a legal practitioner, who should have updated knowledge and then if he wants to rely upon some changed legal position, then in order to grab the opportunity he should have approached this Court immediately. It appears that the present Petition was filed on 19th October 2023 and till 18th March 2024 it was not even circulated. As aforesaid, the present Writ Petition suffers from delay and laches and therefore, it deserves to be rejected.

7. The Writ Petition stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE