IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2801 OF 2015

Shri. Udaysing Harinarayan Rajpurohit,
Occ.Business,
Permanently residing at flat no.602,
Chiranjeet Enclave, 90 feet wide road,
Shiv Mandir Road, Bhayender (West)
Dist. Thane. .. Applicant

Versus

1. The State of Maharashtra,
(Through the Sr. Inspector of Police, EOW, Thane)

2. Mr. S.R.Ghosalkar,
Assistant Inspector of Police, EOW, Thane.

3. Mr. Deepak Shripat More,
301,Sagar Kiran, Navghar Road,
Bhyander (E), Thane. .. Respondents

WITH
WRIT PETITION NO. 1746 OF 2017

Mrs. Neema Udaysingh Rajpurohit
Age. 50, Occ. Housewife
Permanently residing at
Room No. 602, Chiranjiv
Enclave, 90ft. Shivmandir Road,
Bhayander (W), Thane .. Petitioner

Vs.

1. The State of Maharashtra
(Through the Sr. Inspector of Police, EOW, Thane)
2. Mr. S.R.Ghosalkar
Assistant Inspector of Police, EOW, Thane.

3. Mr. Deepak Shripat More
301,Sagar Kiran, Navghar Road,
Bhyander (E), Thane. .. Respondents

Mr. Rajendra Sorankar for the Petitioner in Both WPs.
Ms. Mahalxmi Ganapathy APP for the Respondent-State.
None appeared for Respondent No.3.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

RESERVED ON : 18th DECEMBER, 2023
PRONOUNCED ON : 28th FEBRUARY, 2024

JUDGMENT [PER: SHYAM C. CHANDAK, J.]

1) Present Petitions are filed under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, seeking to quash F.I.R. bearing No.135 of 2015/No.I-35 of 2015 and charge-sheet bearing No.RPC/293/2017 arising out of said F.I.R., registered for the offences punishable under Sections 406, 420 r/w. 34 of the Indian Penal Code and now pending in the Court of 6th Judicial Magistrate First Class, at Thane. Initially, said F.I.R. was registered with Bhayender Police Station. Later on, the investigation was transferred to E.O.W., Thane, who submitted the charge-sheet. Accordingly, the said case came to be registered. Petitioner in Writ Petition No.2801/2015 is Accused No.1 and the Petitioner in Writ Petition No.1746/17 is a proposed accused in the said crime (for convenience hereinafter they are referred to as

'Accused Nos.1 and 2 respectively').

2) Heard learned counsel Mr.Rajendra Sorankar for the Petitioner and Ms. Mahalaxmi Ganapathy, learned APP for the Respondents-State. Despite notice, none appeared for the Respondent No.3 on the date of hearing. Perused the record. Respondent No.3 has filed his Affidavit-in-reply in Writ Petition No.2801/2015 opposing the Petition.

3) Record indicates that, both the Petitions were admitted on 28th February 2019 and respective counsel waived notices for the Respondents.

4) In short, the facts giving rise to these Petitions are as under:

4.1) The impugned F.I.R. was registered on 6th February 2015 on a report lodged by the Respondent No.3 wherein it is narrated that, in April 2004, Accused No.1 met with the Respondent No.3 and his father and told them that, the occupants of an old chawl of Ramu Kadakia, situated at Bhayender (W), Gaodevi Temple Road, desire to develop the chawl, and for want of money, he proposed them to develop the said chawl in partnership. Thereafter, the Respondent No.3 and his father decided to start a construction business with Accused No.1.

4.2) On 19th May 2004, the Respondent No.3 and Accused No.1 entered into an Agreement to purchase total 939.5 sqr. mtrs. land, located in various city survey Nos., situated at Bhayender (W), Gaodevi, from the proprietors of M/s. Shri Builders and Developers, Bhayender (E), for a consideration of Rs.60,00,000/-. At that time, the Respondent No.3 and Accused No.1 paid Rs.15 lakh in cash to M/s.Shree Builders. Thereafter, they started a construction Company in partnership *viz.,* M/s.Shree Estate Venture (the partnership firm'. For short). Both the partners were having 50% share each in the said firm. A Current Account of the partnership firm was opened in Basin Catholic Co-operative Bank. Mr. Anil Tale, acquaintance of Accused No.1, was appointed to look after the transaction of the partnership firm. Then, Rs.30 lakh were paid by cheque drawn on the said Current Account of the firm. The balance amount of Rs.15 lakh was paid in cash by the Respondent No.3 and Accused No.1.

4.3) Thereafter, Respondent No.3 and Accused No.1 started to construct the building *viz.*, Devi Darshan Tower on the said land for which the Respondent No.3 spent Rs.90 lakh. After start of the construction work, they started to sell the flats/tenaments therein. The Accused No.1 used to keep with him the cash received from the customer and he used to deposit the cheques of the customers in the said Current Account of their firm. The Accused No.1 used to spent that money for the construction work. The Respondent No.3 had given blank signed cheques to Accused No.1 for withdrawal of money and to expedite the construction. In the year 2008, Devi Darshan Tower was completed. It was ground plus 7 storied comprised of total 41 flats.

4.4) It is alleged that, meanwhile, Respondent No.3 and Accused No.1 decided to purchase 16 *acres* land, in survey No.146, at Konkner, Palghar, owned by Ramesh Bafna, for a consideration of Rs.99 lakh, to be paid out of the sale proceeds of the said 41 flats. Initially, Rs.50 lakh were paid in cash from the cash funds of the partnership firm. While making payment of the balance amount of Rs.25 lakh, an amount of Rs.12 lakh were paid by the partnership firm and Rs.13 lakh were paid by the father of Respondent No.2. Rs.8 lakh were paid by cheque drawn on the current bank account of the father of Respondent No.3. The 16 *acres* land was decided to be purchased in the name of the partnership firm.

4.5) However, the Accused No.1 purchased that 16 *acres* of land jointly in his and his wife's name *i.e.* Accused No.2. Similarly, the Accused No.1 misused the blank cheques signed by the Respondent No.3 for his own expenses *i.e.* purchasing Car, Motor Cycle etc., stealthily transferred Rs.75 lakh in his Union Bank Account, at Bhayender from the partnership firm's account and also transferred Rs.25 lakh in the bank account of the Accused No.2. The investigation revealed that, the Accused No.1 purchased certain landed properties out of the said money. Thus, between

April-2007 to June-2010, the Accused No.1 misappropriated total Rs.1,38,83,752/- from the partnership firm's Current Account, in which the Accused No.2 was also involved. However, charge-sheet came to be filed against Accused No.1 by showing Accused No.2 as wanted. Hence, necessary amendment was incorporated in the Petitions.

5) Learned counsel for the Petitioners vehemently submitted that, basically, the impugned F.I.R. relates to the dispute arising out of the partnership business and settlement of the partnership accounts. The Respondent No.3 has suppressed that, prior to filing of the F.I.R., an Arbitrator was appointed by the this Court to adjudicate the said dispute in view of the terms of the partnership Agreement. Absolutely, there is no allegation of an inducement or misrepresentation to the Respondent No.3 to commit the alleged fraud. Therefore, the charge of the offences under Sections 406 and 420 I.P.C. is not made out. The learned counsel submitted that, the Arbitration proceedings were terminated on 26th March 2014 due to the lackadaisical approach of the Respondent No.3. However, on his request, said proceeding was revived.

5.1) The Respondent No.3 filed his statement of claim in the Arbitration proceeding on 15th April 2014. Said claim *inter alia* not only minutely covered all the issues including the issues pleaded in the F.I.R.

but also the money claims of the Respondent No.3 and issues pertaining to the accounts of the partnership firm. However, the impugned F.I.R. is filed just to frustrate the Arbitration proceedings and to tamper the evidence of the Petitioner at the behest of the Respondent No.3.

5.2) It is submitted that during pendency of the Petition of Accused No.1, the Respondent No.1 *malafidely* issued a restraining Order to the Revenue Authorities, whereby it was directed that the 11 properties of the Petitioner should not be transferred in view of this F.I.R. However, in view of the directions in Writ Petition No.4829/2017 filed by the Accused No.1, the Respondent No.1 revoked the said restraining Order.

5.3) It is submitted that, the Respondent No.3 had filed an Application under Section 17 of the Arbitration and Conciliation Act, 1996 (‘*the Act*’, for short) before the Arbitrator. After considering the material on record, the learned Arbitrator pleased to reject the plea of fraud contended against the Accused No.1 by the Respondent No.3.

5.4) In the backdrop, the impugned F.I.R. is false. Hence, said F.I.R. and charge-sheet bearing No.RPC/293/2017, pending before the Court of 6th J.M.F.C., at Thane, may be quashed.

6) Learned APP submitted that, the investigation has transpired sufficient material to prosecute the Petitioners. As a result, both the

Petitions may be dismissed.

7) In the Affidavit-in-Reply dated 28th February 2018, it is stated that, after completion of the building under the partnership Agreement in 2009-10, on several occasions the Respondent No.3 requested the Accused No.1 to furnish the details of the account of the partnership firm, but there was no response. In the year 2012 also the Respondent No.3 requested the Accused No.1 to give the accounts as he was managing the affairs of the accounts *qua* the partnership firm, but in vain. Hence, the Respondent No.3 invoked the arbitration proceedings and filed a complaint on 19th June 2013 with Bhayendar Police Station. Ultimately, police registered the impugned F.I.R. Thereafter, police recorded the statement of Accused No.1 wherein he has admitted that, the Respondent No.3, reposing faith in him, had issued the blank cheques and gave it to him for the business purpose.

8) Looking at the rival submissions it is apparent that, even though the alleged fraud was revealed to the Respondent No.3 before filing of the arbitration proceeding, he lodged the complaint thereof on 19th June 2013. The F.I.R. is silent as to why the Respondent No.3 took recourse to the arbitration proceeding first and then the F.I.R. Yet, it is significant to note that, the alleged misappropriated amount of Rs.1,38,83,752/- has been part of the claim of Rs.8,28,30,720.50 filed by the Respondent No.3

with the Arbitrator. Said claim is inclusive of the profits earned by the partnership firm, alleged damages suffered by the Respondent No.3 etc. and it is subject to tax/s. It also included the dispute relating to purchase of the 16 *acres* of land by the Accused No.1.

9) The record indicates that, during pendency of the arbitration proceeding, a Chartered Accountant was appointed to furnish his report as regards the matters concerning the accounts of the partnership firm. Meanwhile, the Respondent No.3 filed an application under Section 17 of the Act. After hearing the learned Advocate for either side and looking at the material relied upon by the parties, the learned Arbitrator decided the Application under Section 17 of the Act by an Order dated 15th January 2018. However, till that date, the report of the Chartered Accountant was not received to the learned Arbitrator.

10) As per the Final Report and the charge-sheet submitted by the Investigation Officer, the Accused No.1 has committed a fraud in respect of said amount of Rs.1,38,83,752/-. As a result, said case No.RPC/293/2017 came to be registered against the Accused No.1. According to the Investigation Officer, the Accused No.2 is also involved in the said offence, therefore, a provision has been kept open to submit a Final Report against her after necessary investigation. The Final Report does not carry any

material based on which it can be said that, there is no *prima facie* case against the accused persons of the alleged offences or that, both accused are falsely implicated in this crime. In other words, there is enough material to prosecute both the accused.

11) The said amount of Rs.1,38,83,752/- was also a subject matter in the Application under Section 17 of the Act. In this regard, in his Order dated 15th January 2018, the learned Arbitrator observed that, in his Written Statement the Accused No.1 has admitted the payment of Rs.10,00,000/- to Sundaram Finance and Royal Sundaram Finance, Rs.64,100/- to Laxmi Motors, transfer of Rs.22,00,000/- to the company of Accused No.2 *viz.* Sakshi Infrastructure and transfer of Rs.99,50,000/- to the personal account of the Accused No.1. There was alleged illegal withdrawal of Rs.4,23,000/- by drawing self cheques. However, the Accused No.1 contended that, the said admitted payments or transferred amounts are subject to the accounts to be drawn by the Chartered Accountant appointed in the matter under Section 26 of the Act. Therefore, the learned Arbitrator could not record his opinion or finding as to whether the Accused No.1 has committed fraud in respect of the aforesaid amount or not. As such, said Order dated 15th January 2018 of the learned Arbitrator is not helpful to the accused persons. Therefore, the

claim of the Accused No.1 that he has not committed any fraud in respect of these very amounts cannot be accepted.

12) No doubt, certain findings of the learned Arbitrator in the said Order dated 15th January 2018 are in favour of the Accused No.1, but based on the said findings, the accused persons cannot be held as innocent. Because, the Accused No.1 himself wanted more proof in the case *i.e. a* report by the Chartered Accountant to decide the question of the alleged fraud. Secondly, to accept the plea of innocence of the accused persons or otherwise, this Court will have to examine the veracity of the probable defence taken by the accused persons against the said fraud which defence would be available to them at the time of actual trial of the offence. The efforts of examining the truthfulness of the said defence will not be less than a mini trial for the said offence. Such a recourse is not open while exercising the powers under Article 226 of the Constitution read with Section 482 of Cr.P.C.

13) In view thereof, both the writ Petitions are liable to be dismissed and are accordingly dismissed.

(SHYAM C. CHANDAK,J.) **(A. S. GADKARI, J.)**