

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3162 OF 2018**

Ashapura Options Private Limited & Ors.

... Petitioners

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Aditya Mithe a/w. Mr. Sachin Agawane & Mr. Krishna Tawari for
Petitioners.

Mr. S.V. Gavand, A.P.P. for Respondent-State.

A.P.I. Mr. Bapu Ghodke, Borivali Police Station, Mumbai is preent.

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

DATE : 10th April 2024.

PC. :

1) By the present Petition under Article 226 of the Constitution of India, the Petitioners have prayed for quashing of CR No. 461 of 2017 dated 9th November 2017 registered with Kasturba Marg Police Station, Borivali, Mumbai, under Sections 465, 467, 468, 471, 474, 34, 120B of Indian Penal Code.

2) Heard Mr. Mithe, learned Advocate for Petitioners and Mr. Gavand, learned A.P.P. for Respondent-State. Perused Affidavit dated 4th April 2024 filed by Mr. Bapu M. Ghodake, Assistant Police Inspector attached to Borivali Police Station and the other record produced before us.

3) Record reveals that, the Respondent No.2 had filed complaint bearing CC No. 488/SW/16 before the learned Additional Chief Metropolitan Magistrate, 68th Court, Borivali, Mumbai, alleging various offences against the Petitioners under the I.P.C. and for a relief to refer the said complaint to the Respondent No.1 under Section 156 (3) of Cr.P.C., to register a case and to investigate the same and for other consequential reliefs.

3.1) The learned Magistrate by its Order dated 20th February 2017 has observed that, considering the nature of allegations, the said complaint was not just for sending it for investigation under Section 156(3) of Cr.P.C. as prayed for. The learned Magistrate therefore directed that, the complaint be placed for verification of the complainant on the next date.

3.2) On 8th August 2017 the learned Magistrate read the complaint and verification statement of the complainant and directed the Respondent No.1 to investigate the matter under Section 202 of Cr.P.C. and submit its report to it. The said Order was communicated to the Respondent No.1 Police Station by the Judicial Clerk of the concerned Court by its covering letter dated 31st August 2017. In the covering letter the words 'investigation U/sec. 156(3) Cr.P.C.' though infact were cancelled by a line drawn on it, the same was not proper and gave an impression of underlining the said sentence and therefore the Respondent No.1 lodged present crime on 9th November 2017.

4) In pursuance of Order dated 26th March 2024, Mr. Bapu M. Ghodake, Assistant Police Inspector attached to Borivali Police Station,

Mumbai has filed a detailed Affidavit dated 4th April 2024.

4.1) In the said Affidavit, the aforementioned facts have been in detail explained. It is further stated that, after realizing the inadvertent error and the incorrect interpretation of covering letter dated 31st August 2017, necessary steps were adopted by the Respondent No.1 and a report under Section 202 of Cr.P.C. was submitted before the trial Court on 10th January 2018. The concerned Officer in para No.6 has admitted that, it was a sheer inadvertent error in lodging the said crime by misconstruing the contents of the said letter, due to the incomplete erasement of the aforementioned sentence from it.

5) As the Order dated 8th August 2017 directing to submit report under Section 202 of Cr.P.C. has been complied with by the concerned Officer by submitting its report dated 10th January 2018, we see no reason to keep the F.I.R. pending on the file of the concerned Police Station and we accordingly quash it.

6) Learned Advocate for Petitioner, on instructions, submitted that, as a matter of fact, subsequently the learned Magistrate has dismissed the said complaint filed by Respondent No.2 by an Order dated 4th January 2024.

7) In view of the above deliberation, nothing further survives in the Petition and is accordingly allowed in terms of prayer Clause (b).

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)