IN THE COURT OF HON'BOLE J.M.F.C. ULHASNAGAR

RCC 755/2018

24 JUL 2018

Shri RITESH VIRENDRA MISHRA,
Indian inhabitant, Hindu adult,
Aged about 35 years, occupation,
Partner M/s Assets Reality,
Having office at 002, Sanghvi Estates CHS.,
L wing, RTO road, Opp. Cinemax,
Kalyan west.
Dist : Thane ..... COMPLAINANT.

24 JUL 2018

V/s

1. Shri PANKAJ JATASHANKER TRIVEDI,
   Indian inhabitant, Hindu adult,
   Aged 37 yrs, occupation nil,
2. Smt.NIRUPAM PANKAJ TRIVEDI,
   Indian inhabitant, Hindu adult,
   Aged 34 yrs, occupation nil,
   both residing at Row house no. 10
   "The Chalets Avenue", Opp. Marathi school,
   Sonivli, Badlapur west.
   Dist: Thane.
3. Mr. ATIF ISLAM,
   Indian inhabitant, Muslim adult,
   aged 40yrs, Occupation business,
4. Mr.RIYAZ KHAN @ MUNNA,
   Indian inhabitant, Muslim adult,
   aged 45 yrs, Occupation business,
5. Mr.AKHIFUL ISLAM.

Put for Argument

30/7/18

Indian inhabitant, Muslim adult,

aged 34 yrs, Occupation business,

all residing at E-1/405, Punoday Park,

Adharwadi, Near Don Bosco school,

Kalyan west.

Dist : Thane.

6. Shri VINOD PRAKASH TIWARI,

Indian inhabitant, Muslim adult,

aged 43 yrs, Occupation Nil,

all residing at 309, Bharat appt.,

Chinchpada road, Nr. Saket collage,

Kalyan east.

Dist : Thane.

Having office at shop no.5,

Sai Shradha colony, Shanker Pawshe road,

Kailash nagar,

Kalyan east.

Dist Thane.

7. Shri YOGESH HARISHANKAR DUBEY.

Indian Inhabitant,Hindu adult aged 28 yrs,

Occupation service

r/o Row house no. 11

"The Chalets Avenue", Opp. Marathi school,

Sonivli, Badlapur west.

Dist: Thane.

.....ACCUSED.

COMPLAINT UNDER SECTION 147, 149, 384, 406, 420, 427, 467, 471, 452, r/w section 34 of of INDIAN PENAL CODE.

MAY IT PLEASE YOUR HONOUR,

ORDER BELOW EXH.1 IN R.C.C.NO.755/2018

1. The complainant along with his counsel is present. The complaint is filed against the accused person for the offence punishable under section 147, 149, 384, 406, 420, 427, 467, 471, 452 read with Section 34 of the Indian Penal Code.

2. It has been prayed that the case be sent to the Badlapur West Police Station for investigation under section 156 (3) of Criminal Procedure Code.

3. Heard the learned counsel for the complainant. Perused the complaint. According to complainant, he is builder and developer. Accused No.1 was his partner in the Chalets Avenue Project. Accused No.2 is wife of Accused No.1. Accused No.3 to 5 are labour contractor, who were engaged by the complainant by doing his construction. Accused No.6 is the friend of Accused No.1 and Accused No.7 is the person to whom Accused No.1 has sold the Row House No.11. The complainant submits that Accused No.1 was not putting any efforts in the said project. He introduced the Accused No. 3 to 5 to the complainant to allot the RCC. work. Accused No.1 had promised to bring fund in the partnership but inspite of passing of two years, he failed to bring any funds. Therefore, the complainant wanted to remove Accused No.1 and 2 from the partnership. However, the accused threatened the complainant with dire consequences. Thereafter, by mutual understanding the complainant and Accused No.1 and 2 entered into compromise and the complainant alloted them two row houses and four flats in the said project. In consideration to this retirement deed came to be executed by the accused No.1 on 16/03/2017.

4. The complainant further submits that inspite of retirement the accused No.1 used to visit the site. In the month of October 2017 it came

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to the knowledge of the complainant that, that Accused No.1 has withdrawn an amount of Rs.11838215/- from the firm. When the complainant confronted this to Accused No.1, the accused denied to repay the amount. Therefore, the complainant filed R.C.C.No.268/2018 against the accused. Thereafter, dispute took place between the complainant and Accused No.1 and 2. Accused No.3 to 5 inspite of termination of their contract used to visit the site and threatened the complainant and demanded money from him. On 06/04/2018 Accused No.1 and Accused No. 3 to 5 arrived on the site and started removing their impliments which cause damage to the site. They threw bamboo, wooden planks, centring materials. Therefore, the complainant approached the Badlapur West Police Station for taking necessary action. But no action was taken. Further, Accused No.1 used to visit sight after that also he used to break anti social elements i.e. Accused No.5 on the site to extort money from the complainant. Accused No.5 is an R.T.I. activist who had made several application before the Kulgaon Baldpuar Municipal Counsel stating that the site is illegal. Accused No.5 is doing these acts to extort money from the complainant.

5. The complainant further submits that on 11/06/2018 Accused No.1 alongwith Accused No.6 and some un identified persons entered the row house forcefully. Therefore, the complainant filed a Civil Suit. Again and again the accused are visiting the site threatening the complainant to extort money from him. Therefore, the complainant the police station, but no action was taken. Hence, he has filed this application for giving direction under Section 156(3) of the Cr.P.C.

6. Perused the complaint alongwith the documents Exh.3 annexed. As far as allegation of cheating, forgery is concerned for that the complainant is already filed a case R.C.C. 268/2018. In the instant matter the complainant prays for investigation under Section 156(3) only for

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offence of Section 147, 149, 389, 452 read with Section 34 of the Indian Penal Code. Prima-facie it appears that due to the inaction of the police station, the complainant is forced to knock the door of the Court. Further the documents filed by the complainant prima facie establishes that, something wrong has been committed which requires detail and scientific investigation and that can be done only by police. Moreover, the offences are cognizable and the allegations of are extorting and criminal tracepass, therefore the investigation requires collections of evidence, which can be exclusively done by police. Thus, in the above facts and circumstances of the case, it is essential to direct the investigation of the case by Badlapur West Police Station. Thus, detail investigation by police is required in the instant matter. Hence, I pass the following order :

: O R D E R :

1. Call report under section 156 (3) of Criminal Procedure Code from Badlapur West Police Station.

2. Issue letter to the Badlapur West Police Station.

3. The complaint be sent to the Badlapur West Police Station. Report be submitted by Badlapur West Police Station to this Court within two months from receipt of this order.

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(Shailja O. Pandey)
Jt. Civil Judge J. D. and J.M.F.C.
Ulhasnagar.

Ulhasnagar.

Date:-15/10/2018

3 NOV 2018