

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 676 OF 2023

Sachin s/o Omprakash Agrawal

Applicant

Versus

Rajendra Bhivsan Mali

Respondent

Mr. R. R. Deshpande, Advocate holding for Mrs. P. R. Deshpande,
Advocate for the applicant.

Mr. Y. A. Jadhav, Advocate for the respondent.

CORAM : R. M. JOSHI, J.

DATE : 21st JULY, 2023.

PER COURT :

1. This application is filed for quashment of private complaint being Criminal Application No. 176/2015, for the offence punishable under Sections 406, 408, 420 read with section 34 of the Indian Penal Code.

2. Facts giving rise to this application can be narrated in nutshell as under :-

Respondent filed application before Judicial Magistrate First Class, Chaligaon under Section 156(3) of the Code of Criminal Procedure for registration of crime and investigation thereof. The

said application came to be rejected by order dated 22nd October, 2013. The said order was challenged before the revisional Court and the revisional Court confirmed the said order on 23rd December, 2014. After rejection of revision, respondent filed another complaint before Judicial Magistrate First Class, Chalisgaon being Criminal M.A. No. 176/2015. By making the same allegations, a complaint was filed and issuance of process was sought. In the said complaint, order was passed under Section 202 of the Code of Criminal Procedure seeking report of the concerned police station. After receipt of the said report, process came to be issued against the present applicant.

3. Learned counsel for the applicant states that already on the similar facts findings are recorded by the learned Magistrate to the effect that no offence is made out against the applicant herein and the said order has been confirmed in the revision. It is thus his contention that for the same offence no separate complaint can be permitted to be filed. He further submits that even from perusal of the complaint in question, what has been alleged against the present applicant is that the respondent was required to take insurance policy and the process fees for the loan transaction was received by

the bank. It is his contention that the present applicant is the Manager of the bank and that he has no personal interest in the said transaction. By relying upon the judgment of the Hon'ble Apex Court in the case of Vijaykumar Ghai and others vs. The State of West Bengal and others, **(2022) 7 SCC 124**, and Deepak Gaba and others vs. State of Uttar Pradesh and another, **(2023) 3 SCC 423**, it is sought to be argued that the second complaint on the same fact will not be maintainable and that the present complaint is nothing but to cause harassment to the applicant on personal vengeance. It is submitted that perusal of the complaint on the face of it does not make out case for offence punishable under Section 408 of the Indian Penal Code as the present applicant is not the servant of the respondent. It is also argued that the offence punishable under Section 420 of the Indian Penal Code is also not made out. Without prejudice to this submission, by relying upon the judgment in the case of Vijay Kumar Ghai (supra) it is argued that even if allegation constitutes offence, but there is no evidence adduced or evidence adduced clearly fails to prove the charge. By referring to the complaint, it is submitted that no particulars are given in respect of payment of Rs. 53,800/- to the applicant. It is also contended that there is no specific averment as to whom the amount was paid as

there are two accused arrayed in this complaint. With these submissions, it is contended that it is a fit case for quashment of the proceedings.

4. Learned counsel for the respondent opposed the said contention by referring to the order passed by the learned Magistrate as well as order passed by the revisional Court. It is contended that in the said orders, option was kept open for the present respondent to prefer complaint. It is his contention that for the purpose of entertaining application for issuance of order under Section 156(3) of the Code of Criminal Procedure and in a private complaint requires altogether different considerations. According to him, in the private complaint, a complaint is supported by verification and other material placed on record which cannot be considered while dealing application under Section 156(3) of the Code of Criminal Procedure. Similarly, it is argued that report of police under Section 200 of the Code of Criminal Procedure also supports the contention of the complainant. It is case of the respondent that there are specific pleadings in the complaint that amount of Rs. 53,800/- was handed over to the accused and proof of said allegation be decided after recording of evidence. In support of his contention, he has placed

reliance on the judgment of the Hon'ble Apex Court in the case of State of Maharashtra vs. Ishwar Piraji Kalpatri and others. (1996) 1 Supreme Court Cases 542, wherein the Hon'ble Apex Court has held that the power under Section 482 of the Code of Criminal Procedure needs to be exercised in extra ordinary circumstances and not in routine course. He also placed reliance on guidelines issued by the Reserve Bank of India which prohibit canvassing of the insurance policy etc. for the purpose of banking business.

5. No doubt, initially complaint was lodged by the present respondent under Section 156(3) of the Code of Criminal Procedure seeking direction from the learned Magistrate for registration of offence and investigation thereof. The said complaint/application came to be rejected on 22nd October, 2013. In the said order, it is held by the learned Magistrate that since the application is not complaint as envisaged by Section 2(d) of the Code, no cognizance thereof was taken. However, it was further observed that it is within the right of the complainant to file such complaint. This order is confirmed by the learned Sessions Judge. There is no exception taken to these orders by the applicant herein and hence these orders have attained finality.

6. Present case is not one wherein respondent has filed complaint by suppressing the fact about previous complaint as there is clear disclosure of the same. On the contrary, his contention regarding complaint gets support from the judicial orders which have attained finality. There is prima facie substance in the contention of learned counsel for the respondent that for the purpose of deciding application under Section 156(3) of the Code of Criminal Procedure, different yardsticks are required to be applied than while issuance of process in the complaint under Section 200 of the Code of Criminal Procedure. In first case, except statement in complaint nothing else could be considered, whereas in later case, verification, documents, evidence, report of police etc. needs to be considered while issuing process.

7. Here in this case admittedly, there is no personal dispute between the parties. Hence, question of any complaint being filed by respondent in order to reckon vengeance against the applicant does not arise. This is also not case of pure civil/commercial dispute. In respectful view of this Court, applicant cannot get benefit of judgment in case of Dipak Gaba (cited supra). Bare perusal of present complaint as well as previous complaint indicates that there

is specific allegation made in the complaint about a sum of Rs. 53,800/- being paid to the accused. At this stage, it cannot be accepted that merely because time and date of the said payment has not been recorded therein, it could be held that the said contention can never be proved. It is for the Trial Court to appreciate the entire evidence adduced before it and then to decide whether to accept or reject the same. The law on the point of quashment by exercise of power under Section 482 of the Code of Criminal Procedure is settled to say that at this stage probability or genuineness of allegations cannot be gone into. The Court needs to accept the imputations made in complaint as it is and to see whether any offence is made out against the accused or not. Suffice it to say that prima facie perusal of the complaint, if it is accepted as it is, makes out a case of offence punishable under Section 420 of Indian Penal Code against the present applicant. This is not fit case to exercise extraordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure. Hence, there is no merit in the application. Resultantly, application stands dismissed.

(R. M. JOSHI)
Judge