IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 307 OF 2014

1. Bhauso Rajaram Gulavni & Ors.
Age-70 yrs, occu-Agri & Chairman

2. Mohan Chindambar Yedurkar
Age-61 yrs, Occu-Service,

3. Kishor Bhimrao Patil
Age-55 yrs, Occu-Service,
All R/o Tatyasaheb Korenagar,
Amrutnagar, Tal-Panhala.
Dist-Kolhapur

4. Uttam Dyandev Patil
Age,-37 yrs, Occu-Service,
R/o Ametewadi, Tal-panhala,
Dist- Kolhapur. ...Applicants

V/s.

1. The State of Maharashtra

2. Ramchandra Shankar Shinde
Age-62 yrs, Occu-Retd. & Agri,
R/o-Sonavde Paiki, Shindewadi,
Tal-Shahuwadi, Dist-Kolhapur ...Respondents

Mr. Anand Patil for the Applicant.
Ms. M. H. Mhatre, APP for the Respondent-State.

CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.

RESERVED ON : 7th OCTOBER, 2023.
PRONOUNCED ON : 2nd NOVEMBER, 2023.

JUDGMENT : (PER SHARMILA U. DESHMUKH, J.)

1. Heard Mr. Anand Patil, learned Advocate for the Applicant and learned APP for the Respondent-State. Respondent No. 2 is duly served and has caused appearance in the matter. Despite being served, none appears for Respondent No. 2

2. By this application filed under Section 482 of Cr.P.C., the Applicants seek quashing of CR. No. 3 of 2014 registered with Shahuwadi Police Station, Dist- Kolhapur for the offences punishable under Section 406, 420 read with Section 34 of the Indian Penal Code.

3. The facts of the case are that, the Applicants are the employees of Shri. Warana Sahakari Dudh Utpadak Prakriya Society Ltd. (for short "the Society"). The Applicant No.1 is the Chairman, Applicant No.2 is the Deputy Managing Director, the Applicant No.3 is the General Manager and Applicant No.4 is the Field Supervisor at Bambavde Chilling Center. The Society is engaged in the business of supply of milk. The collection of milk is done from the supplier/farmers of western Maharashtra with the assistance of about 1,800 dairies. The system followed was that, the milk dairies used to collect the milk directly from the farmers/suppliers at local level and send it to the society. The payment for the milk supplied is disbursed thrice in a month to the milk

dairies thereafter milk dairies distributed the amount to the individual milk suppliers/farmers. As per the resolution passed by the Society, certain percentage of profit earned by the Society is distributed to the milk suppliers/farmers in the form of incentive /bonus through the local village milk dairies. The Respondent No.2's son of is the owner of Shri. Nandeshwar Dudh Sanstha (for short "Nandeshwar")-a milk dairy and supplied milk to the Society. Respondent No. 2 lodged CR. No. 3 of 2014 alleging that, the Applicants in collusion, have committed breach of trust and misappropriated the amount of the incentive bill of Rs. 59,969/- which was not paid for the period from 1st April, 2012 to 31st March, 2013.

4. Mr. Patil, learned Advocate for the Applicant submits that, the lodgment of the crime is an abuse of process of law. He would submit that, the Applicants being the employees are bound by the resolution dated 19th August, 2013, annexed at page No. 21 of the Petition, passed by the Society resolving that the incentive bill will not be paid to the milk dairies who are supplying less than 50% milk of the total collection to the Society. He would urge that, the non payment if any, is a matter of civil dispute. He would further urge that, the Society has not been impleaded as an accused. That the allegation of misappropriation is

patently false as the amount has been withheld and not misappropriated. He points out the Bank Statement annexed at page No. 22 of the Petition which shows the names of about 245 milk dairies whose incentive bills are withheld including the name of Nandeshwar. He would further submit that, the ingredients of the alleged offences is not attracted inasmuch as the amount due for the milk supply was duly paid and it is only the incentive bill which is claimed to be unpaid. He would submit that, the incentive amount is lying in the bank account in the name of Warana Sangh under the head 'Stop Payment' and as such, there is no misappropriation. According to him, as the milk dairy belonging to the First Informant's son, was not supplying the necessary collected quantity to the society, on 14th June, 2013 the Society had informed the Chairman of Nandeshwar that out of total collected quantity only a fraction of the collected quantity was being supplied and the balance milk was being supplied at other places. He points out the communication dated 14th June, 2013 annexed at page No. 35 of the Petition by which Nandeshwar was notified to supply entire collection of milk to the Society, failing which the Society will not accept the supply of milk from them.

5. We have considered the submissions and perused the record.

6. The case of the prosecution as spelt out from the FIR is that, the firm of the First Informant's son was an intermediary collecting milk from the farmers for onward supply to the Society. The Society is a registered Society and is governed by the resolution passed by its management. The allegation in the FIR is that, as the invoices for the supply of milk were not being cleared within time, the milk dairies were supplying part of the collected milk to others. That although a complaint was made with the Society, no action was taken. It is alleged that for the period from 2012 to 2013, the incentive bill of Rs. 59,969/- was not paid under the pretext of less supply of milk. That the amount of incentive bill has been misappropriated by the Applicant. It is alleged that on 6th October, 2013 at about 1.45 p.m. when Respondent No. 2 met the officials seeking payment of the bill, no heed was paid by the officials. It is further alleged that complaint was lodged with the Vadgaon Police Station seeking investigation and during the investigation, the officials were unable to give any satisfactory answer for non payment.

7. Firstly, it needs to be noted that, the sum and substance of the allegation is that, the amount of the incentive bill has not been paid by the society to the Respondent No.2's firm Nandeshwar. Learned

counsel for the Applicant pointed out to this Court the resolution which has been passed by the society resolving that, the milk dairies who are not supplying the entire collection to the society will not be entitled to the payment of the incentive bills. The Applicants in the present case are bound by the resolution of the Society and have acted accordingly. The FIR itself shows that, Nandeshwar was not supplying the entire collection of milk to the Society. The issue as regards the entitlement of Nandeshwar to the incentive payment considering the resolution passed by the Society is clearly a civil dispute.

8. The allegation in the FIR that, there is a misappropriation of the amount by the Applicants is prima facie contrary to the bank statement produced on record by the Applicants, which shows that the incentive payment of about 245 milk dairies have been withheld and the same are lying in the concerned bank account of the society. The lodgment of the crime in the present case appears to be counter blast to the notice of 14th June 2013 issued by the Society to Nandeshwar calling upon it to supply the entire collection milk to the Society failing which the Society will stop accepting the supply of the milk. In any event, perusal of the FIR would indicate that the dispute in the present case is civil in nature inasmuch as the recovery of the amount of the incentive

bill is sought, which is a commercial transaction between the parties.

9. The dispute in the present case is sought to be given a criminal complexion by alleging that there has been a misappropriation by the Applicants who are the employees of the society. The material produced on record would substantially demonstrate that, there is no misappropriation at all and on the other hand the amounts which have been withheld are lying safely in the bank account of the Society itself. The lodgment of the crime is for the alleged offences punishable under Section 406 and 420 read with Section 34 of the IPC. The offence under Section 406 of criminal breach of trust is attracted when a person entrusted with the property, dishonestly misappropriates the same for his own use. In the present case, the amount of Rs. 59,969/- which is alleged to have been misappropriated is conclusively demonstrated to be lying sefely in the bank account of the society itself. As such the offence of criminal breach of trust is not attracted.

10. As regards Section 420 of the IPC is concerned, the offence is attracted in the event there has been cheating and dishonest inducement of the person deceived to deliver any property to any person. There has to be an intention to deceive from the inception to attract the offence under Section 420 of IPC. In the present case, there is no allegation that

the payment for the milk supplied has not been made but the allegation is that the incentive bills have not been paid.

11. Considering that the legal entitlement of the Respondent No. 2 to the incentive/bonus is linked to the resolutions which are passed by the society and the resolution of the year 2013 resolves that such payments are not to be made to the milk dairies who are not supplying the entire collection of milk to the society, the legal entitlement itself is in dispute. The Applicants are bound by the resolution passed by the management and for implementing the same, cannot be held to have committed the alleged offences.

12. Considering the facts of the instant case, we find that, the continuation of the criminal proceedings would amount to abuse of process of law. Resultantly, the Application is allowed in terms of prayer clause (b) which reads thus:

> (b) This Hon'ble Court may call for the record & proceedings of C.R. No. 3/2014 registered with the Shahuwadi Police Station, Dist-Kolhapur for the offences U/s. 420, 506 R/w. 34 of Indian Penal Code & after perusing it, this Hon'ble Court may quash & set aside said FIR & it's further proceedings on such terms & conditions as this Hon'ble Court may deem fit & proper.

13. Rule is accordingly made absolute.

(SHARMILA U. DESHMUKH, J.) **(A.S. GADKARI, J.)**