

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5629 OF 2012

Nipun s/o. Mahendra Garg **....Applicant.**

Versus

The State of Maharashtra & Anr. **....Respondents.**

Mr. V.V. Deshmukh, Advocate for applicant.

Mrs. R.K. Ladda, APP for State/respondent No. 1.

mr. H.F. Pawar, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE &
SMT. I.K. JAIN, JJ.**

DATED : 31st March, 2015.

ORDER :

1. The proceeding is filed for quashing of the F.I.R. bearing No. 114/2008 and the case filed in the F.I.R. in the Court of Judicial Magistrate, First Class, Pachora bearing No. 24/2011. Prayer is also made to quash and set aside the order made by the J.M.F.C. on the first report which was filed as 'C' summary by the Investigating Officer as after this order further investigation was made and chargesheet came to be filed. Both the sides are heard.

2. The crime is registered on the basis of report given by one Poonamchand Mor, Managing Director of Bhagwati

Refineries Private Limited, Pachora. This company was in need of raw material for their business and so, it placed orders with Bhaskar Foods Private Limited, Amravati for purchasing Soya solvent oil. Separate orders were given in respect of different quantities through broker Bajranglala (Lala broker). As per the instruction given by Bhaskar Foods Private Limited and as per their condition, the price of the oil was paid in advance. When entire amount was paid, from the agreed quantity, the quantity of 145 Metric ton, was not supplied and the value of this oil was around Rs. 72.22 lakh. Even the tankers which were sent for collecting oil were detained on 28.10.2008. The complainant company contacted the broker and they went to Bhaskar Foods Private Limited, but no response was given to them and so, report was given against Director - Nipunji Mahendra Garg and Managing Director Subodhji Sharma of Bhaskar Foods Private Limited. The crime is registered for the offences punishable under sections 420, 34 etc. of Indian Penal Code. Only Nipunji Garg has filed the present proceeding.

3. The learned counsel for petitioner submitted that even if the allegations made against the applicant are accepted as they are, it can be said that the dispute is of civil nature and so, the reliefs claimed can be given. He took this Court through

some statements recorded by police which include statements of few brokers. He tried to show that there were similar transactions and in some cases, the goods were supplied. On the other hand, the learned counsel for the complainant took this Court through the statements of other brokers, showing that the amount was given in advance in respect of the transactions in question, but the accused persons avoided to give delivery and they did not allow the complainant's side even to meet them when complainant's side had gone to the office of accused. There are two such statements. There are also statements of truck drivers showing that they had gone to the premises of the accused company and even after the filling the oil, the tankers were not allowed to be taken out by saying that the complainant had not received the price. It appears that Bhagwati Refineries Private Limited filed civil suit also which is bearing No. 47/2009 in the Court of Civil Judge, Senior Division, Jalgaon. In the suit, the relief of recovery of aforesaid amount and also compensation is claimed. The suit was filed on 7.2.2009. It appears that the accused company also filed suit on 29.3.2010 and it is for the recovery of amount of Rs. 1.96 Crore.

4. In support of aforesaid submissions made by the learned counsel for the applicant, some reported cases were

cited like **2013 AIR SCW 1906 [M/s. GHCL Employees Stock Option Trust Vs. M/s. India Infoline Ltd.], 2008 (4) Mh.L.J. (Cri.) 229 [Astec Lifesciences Ltd. Mumbai and Ors. Vs. State of Maharashtra and Ors.] Bombay High Court, AIR 2008 SUPREME COURT 210 (1) [B. Suresh Yadav Vs. Sharifa Bee and Anr.] and AIR 2009 SC (Supp) 59 [V.Y. Jose and Anr. Vs. State of Gujarat and Anr.]**. In these cases, there is discussion about the distinction between pure contractual nature of civil dispute and offence of cheating. It is observed that if the case or offence is not made out, the report or the case itself can be quashed by using provision of section 482 of Cr.P.C. There cannot be dispute over the propositions made by the Hon'ble Apex Court and High Court. The facts of the present case show that in advance, the purchase price was taken as a condition of the contract, but huge quantity of oil was not supplied and even when the complainant's side went to have talk, no response was given. Huge amount was kept with the accused company for many months, but delivery was not given and then dispute was created. There are statements of the brokers, who had placed the orders and they are to the effect that money was paid in advance, but the goods were not delivered. Thus, it cannot be said that false allegations are made or it will be abuse of process of law, if the proceeding is allowed

to continue.

5. The learned counsel for the applicant submitted that when the transaction was made with one company, something ought to have been produced on the record to show that present applicant was looking after the management of the company or he was looking after the day to day affairs of the company. The learned counsel further submitted that if at all there was contract of the complainant with the accused company, that was with the manager of the company and so, prosecution cannot be allowed to continue against the present applicant, who is the director. This submission is not at all accepted in view of the specific allegations made against him by the complainant and the brokers. This Court holds that it is not possible to grant the reliefs claimed.

6. In the result, the proceeding stands dismissed.

[SMT. I.K. JAIN, J.]

[T.V. NALAWADE, J.]

ssc/