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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1450 OF 2015**

M/s. Akla International and another ... Petitioners

Versus

The State of Maharashtra and another ... Respondents

Mr. Niranjan Mundergir i/by Mr. Vikram Sutaria for the petitioners.

Mr. Siddharth P. Munghate for respondent no. 2.

**CORAM : M.L. TAHALIYANI, J.
DATED : AUGUST 10, 2015**

P.C.

Admit. Heard finally.

2. Heard learned counsel for the petitioner and learned A.P.P. for the State.

3. The applicant no.2 is the proprietor of applicant no. 1. Both of them are accused nos. 1 and 2 in private criminal complaint filed by respondent no.2 in the court of J.M.F.C. Vashi vide Criminal Case No. 1098 of 2013. The accused no. 3 HPL Electrical and Power Limited are the manufacturers and suppliers of the electrical cable. The applicant no. 1 was the authorized dealer of the said accused no.3 HPL. Respondent no. 2 is electrical contractor and his work was in progress at Pancharatna Building at Jogeshwari. He had placed an order for supply of Fr PVC wires with accused no. 3 HPL through accused no. 10 Pradip Pawar. The applicant nos. 1 and 2 being authorized dealers of HPL, accepted order of respondent no.2 and the wires/cables were supplied. The cable was installed at the site at

Pancharatna Building, Jogeshwari. There was an incident of fire which according to respondent no.2 was due to the inferior quality of wire. It is the case of Respondent no. 2 before the trial court that he had placed order for FR cable and in fact the cable supplied to him was PVC wire. Though it is disputed by the applicants that the order was for FR wire, the order placed by respondent no. 2 with the applicant nos. 1 and 2 clearly indicates that it was for FR PVC Copper Wire. Therefore, it can be safely said that it was order for FR PVC Copper wire. The wires supplied to respondent no. 2 were PVC wires. It was the case of respondent no.2 before the trial court that the inferior quality wire was supplied to him by the applicants and other accused including HPL and accused no. 10 Pawar in furtherance of their common intention.

4. Therefore, what was necessary to be examined by the trial magistrate was whether the applicant had made out a case of sharing of intention of the applicants. Whether the HPL had requisite intention or not could not be a subject matter of the present petition. However, it was necessary to demonstrate prima facie that the applicants had intention to supply inferior wire.

5. I have gone through the complaint. It appears that the representation was made to respondent no. 2 by accused no. 10 Pawar who had been visiting the site at Pancharatna Building. It is also clear from the complaint that accused no. 10 requested respondent no.2 to place order through applicants as the applicants were authorized dealers of HPL accused no. 3. Therefore, it is abundantly clear from the complaint that the applicants were never in the picture till the order was placed by respondent no. 2 with the applicants. The representation, if any, were made by accused no. 10 Pawar. It is an admitted position that the material was supplied to

respondent no. 2 directly by the HPL on the site. Therefore, there is no material in the application to indicate that the applicants were aware of the material in the consignment supplied to respondent no. 2 by the accused no. 3 HPL. If there was anything wrong in the material, it was the responsibility of accused no. 3. In fact the applicants were responsible for securing payment to accused no. 3.

6. During the course of arguments, it has transpired that the applicants have paid HPL and that they have filed suit against respondent no. 2 for recovery of the amount due from it. The cheques issued by respondent no. 2 in favour of the applicants have been dishonoured. The applicants have therefore, filed criminal complaints against respondent no. 2 under Section 420 of Indian Penal Code.

7. The present complaint, in my opinion, appears to have been filed to create undue pressure on the applicants to resolve the issue in favour of respondent no. 2. As such there was no case for issuing process against the applicants for the offence punishable under section 420 read with 34 of Indian Penal Code.

8. In the result, present petition is allowed. The proceedings pending in the court of J.M.F.C. Vashi against the petitioners hearing Criminal Case No. 1098 of 2013 shall stand quashed. The order passed by the Sessions Judge is accordingly set aside. The bail bonds of the applicant No. 2, if any shall stand cancelled.

(JUDGE)