

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2707 OF 2014

1. William D'souza	
2. Sambhaji B. Sawant	..Petitioners
Versus	
1. The State of Maharashtra	
2. The Maharashtra State Electricity	
Distribution Company Ltd.	..Respondents

Mr. S. P. Shinde, advocate for the petitioners.
Mrs. M. H. Mhatre, APP for the State.
Mrs. Anjali R.S. Baxi, advocate for respondent No.2.

**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATE : 15th July, 2015.

P. C. :

Heard learned counsel and learned APP appearing for the respective parties.

2. This petition is filed under Article 226 of the Constitution of India read with the provisions of Section 482 of the Code of Criminal Procedure, 1973, for quashing and setting aside the FIR No.47 of 2013 registered with Deolali Camp Police Station, Nashik, at the instance of respondent No.2, for the offences punishable under Sections 420, 406, 468, 471 read with Section 34 of the Indian Penal Code, 1860.

3. Petitioner No.1 is the Vice-President(Marketing) and petitioner No.2 is the Service Engineer of M/s. ADD Technologies India Ltd. (for short "the petitioners' company), a company incorporated under the Companies Act, 1956. Respondent No.2 is also a company registered under the Companies Act, 1956, engaged in the business of distribution of electricity.

4. The petitioners' company is engaged in the business of collection service through Any Time Payment Machine (hereinafter referred to as "ATP machine"). On 5th March, 2012, the petitioners' company entered into an agreement with respondent No.2-company for collection of the bills from the consumers through the ATP machines and duly accounting of the same to the said respondent on the terms and conditions mentioned in the said agreement. By this agreement, the petitioners' company has been permitted to install ATP machines at various places throughout Maharashtra including at Nashik District. The petitioners' company has installed one ATP machine at Deolali Camp, Nashik. The petitioners' company under the above referred agreement has been allowed to give sub-contract and such sub-contract has been given in favour of one Smart Security Company.

5. The subject FIR came to be lodged, at the instance of one-Mr. Anil Thorat, Deputy Executive Engineer, Deolali Sub-Division with Deolali

Police Station against the petitioners and one Rakesh Godase. It is alleged in the said FIR that one consumer approached the then Deputy Executive Engineer of respondent No.2-Company inter-alia making a grievance in respect of non-credit of the amount despite the payment made by him through the ATP machine. Therefore, respondent No.2 inquired into the matter and found that the operator of the Deolali Camp had given a duplicate receipt from the ATP machine in the name of the said consumer and he was told that for carrying out the ATP machine in Deolali Camp, Nashik , a sub-contract has been given in favour of Smart Security Company and one Mr. Rakesh Godase, resident of village – Sansari was the operator at the relevant time and he had issued the said duplicate receipt. It was also informed to respondent No.2-company that the said Rakesh Godase had accepted and confessed in writing. It is further alleged in the FIR that petitioner No.2 had not given any information pertaining to sub-contract and resolving the issue of the disputes in respect of duplicate receipt. The allegations are made in the complaint that the information was demanded from petitioner No.2 as to how many duplicate receipts have been issued from the said ATP Machine at Deolali, Nashik. The complaint proceeds further that from the available information, it is found that about 140 customers were issued duplicate receipts by reprinting the same and thereby cheated about 246 customers for the amount of Rs.2,19,720/-. It was

also alleged that because of this, recovery of the bills from the consumers has been delayed. The reputation of respondent No.2-company is also damaged.

6. It is the case of the petitioners that the said complaint was filed on 5th August, 2015 and immediately thereafter of 17th August, 2015, after coming to know about the fraud committed by the sub-contractor's employee - Rakesh Godase, the petitioners' company deposited the amount of Rs.2,19,720/- with interest with the respondent No.2 and, therefore, the grievance of respondent No.2 stands redressed. It is the specific case of the petitioners that by writing letter dated 13th May, 2014, the Zonal Manager of the petitioners' company requested for the withdrawal/compromise of the said FIR lodged by Mr. Anil M. Thorat on behalf of respondent No.2-company. In pursuance of this letter, the report was called from the Superintendent Engineer of respondent No.2-company, and in the report, it has been stated that the petitioners' company has taken care to ensure that such events do not occur in future and it has also deposited the amount of loss. Accordingly it was recommended for approval to withdrawal/compromise the FIR. It is also the case of the petitioners that on 25th June, 2014, the complainant - the employer of respondent No.2 sent a letter to Deolali Police Station informing that since the entire deficit amount along with interest has been deposited and recovered

from the petitioners' company, he has no grievance against the petitioners and in respect of the impugned FIR.

7. The petitioners, in support of their contentions, have annexed copy of the letter dated 22nd August, 2013 issued by the officer of respondent No.2-company. Learned counsel for the petitioners submitted that since the loss suffered by respondent No.2 is made good by the petitioners' company and as respondent No.2 has no objection to withdraw the subject FIR, the same deserves to be quashed and set-aside in the interests of justice. Learned counsel for respondent No.2-company does not dispute the submission of learned counsel for the petitioners and she submitted that appropriate orders may be passed.

8. From the facts stated herein above, it is clear that the contract was given by respondent No.2-company to the petitioners' company for collection of the bills from the consumers through the ATP machines and the petitioners' company had given sub-contract to one Smart Security Company and this Smart Security Company installed ATP machine at Deolali Camp, Nashik. There is no dispute that one Rakesh Godase – employer of the sub-contractor was the operator of this machine. Cheating and fraud, if any, was committed by the said Rakesh Godase and the petitioners were not

even aware about the same. When the petitioners realised the said fraud, they immediately compensated respondent No.2- company by depositing the amount of loss and respondent No.2-company, accordingly, informed the Deolali Police Station that they have no grievance against the petitioners and requested them to withdraw the subject FIR qua the petitioners. Thus, the dispute between the petitioners and respondent No.2 is settled amicably. Be that as it may, it is a cardinal principle of the criminal jurisprudence that there is no vicarious liability unless the Statute specifically provide for the same. The petitioners cannot be held liable vicariously for the acts of the said Rakesh Godase.

9. In that view of the matter, continuation of proceedings against the petitioners would be abuse of the process of law. The subject FIR, therefore, deserves to be quashed qua the petitioners. The writ petition is, accordingly, made absolute in terms of prayer clause (b) qua the petitioners and is disposed of as such.

[ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]