

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION No.425 OF 2016
AND
CRIMINAL APPLICATION NO.2191 OF 2016**

Gulam Sadeq s/o. Gulam Subhani
Farooqi, Age 32 years,
Occ. Business, r/o. Bashir Gunj,
Near S.P. Office,
Beed, Dist. Beed ..Petitioner

Vs.

1. The State of Maharashtra
Through Police Inspector,
Satara Police Station,
Satara, Aurangabad
2. Asfahan s/o. Julfiqaruddin
Siddiqui, Age 42 years,
Occ. Business,
r/o. Plot No.41, Jalan Nagar,
Aurangabad ..Respondents

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Mr.R.R.Mantri, Advocate for petitioner
Mr.S.W.Munde, A.P.P. for respondent no.1
Mr.Mohd. Waseemullah, Advocate for respondent no.2

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**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.**

**RESERVED ON : AUGUST 26, 2016
PRONOUNCED ON : SEPTEMBER 27, 2016**

JUDGMENT (PER SANGITRAO S. PATIL, J) :

Rule. Rule made returnable forthwith.

Heard finally with consent of the parties.

2. The petitioner has prayed for quashing of the Charge Sheet bearing No.38 of 2016 presented in the Court of the learned Judicial Magistrate, First Class (5th Court), Aurangabad on 02.04.2016 arising out of Crime No.352 of 2015 registered against him in Police Station, Satara, Aurangabad for the offences punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code ("I.P.C." for short).

3. The petitioner and respondent no.2 are doing the business of scrap material at Beed and Aurangabad respectively.

4. Respondent no.2 lodged a report on 18.11.2015 against the petitioner, his brother Gulam Tarek Farooqi and Mufti Musaleoddin Khan, alleging inter-alia that on being strongly recommended by Mufti Musaleoddin Khan for becoming a partner with the petitioner in the transaction

of purchasing 700 tonnes of scrap material of Maharashtra Jeevan Pradhikaran, Karad, Dist. Satara ("the Pradhikaran", for short), respondent no.2 met the petitioner at Karad, Dist. Satara on 16.07.2013, when the petitioner demanded an amount of Rs.31,50,000/- in order to enable him to fill-up a tender for purchase of 700 tonnes of scrap material of the Pradhikaran. The petitioner assured that he would treat respondent no.2 as a partner and pay him profit at the rate of Rs.1,500/- per ton of scrap material. Accordingly, respondent no.2 paid the petitioner the amount of Rs.12,50,000/- at his own house at Aurangabad on 17.07.2013. He further remitted an amount of Rs.19,00,000/- through R.T.G.S. in the account of the petitioner on 18.07.2013. An agreement came to be executed between the petitioner and respondent no.2 at Pune on that day. At that time, the petitioner handed over two cheques of Rs.10,00,000/- each to respondent no.2

by way of security. The petitioner had informed respondent no.2 on 18.07.2013 that he would get an order for lifting the scrap material within seven days.

5. Respondent no.2 contacted the petitioner on his mobile phone after seven days. At that time, the petitioner informed respondent no.2 that seven days more would be required for getting the order for lifting the scrap material. Respondent no.2 again tried to contact the petitioner on his mobile phone, however, the mobile phone of the petitioner was found to be switched off. Respondent no.2, therefore, entertained suspicion against the petitioner. He went to the office of the Pradhikaran at Karad, Dist. Satara. He did not find any scrap material lying there. On making further inquiry, he came to know that the scrap material was taken away and disposed of by the petitioner prior to 15 days.

6. Since respondent no.2 had entered into the above-mentioned transaction with the petitioner on the strong recommendations of Mufti Musaleoddin Khan, he went to the said Mufti Musaleoddin Khan at Beed, however, he gave evasive answers to respondent no.2. The cheques given by the petitioner to respondent no.2 got bounced. Respondent no.2, therefore, realised that the petitioner, in collusion with his brother Gulam Tarek Farooqi and the said Mufti Musaleoddin Khan, cheated him of Rs.31,50,000/- on the false representation that he would be getting Rs.1,500/- per ton of scrap material as a share in the profit. He, therefore, lodged the First Information Report ("F.I.R." for short) against the petitioner, Gulam Tarek Farooqi and Mufti Musaleuddin Khan.

7. On the basis of that F.I.R., Crime No.352 of 2015 came to be registered against the

petitioner and the above-named two accused persons for the offences punishable under Sections 420 and 406 read with Section 34 of the I.P.C. The investigation followed. Statements of the witnesses were recorded. The documents concerned came to be seized. After completion of the investigation, the Investigating Officer found sufficient grounds to proceed against the petitioner and two other accused persons. He, therefore, filed the charge sheet against them, which has been sought to be quashed by this Criminal Writ Petition under Article 226 of the Constitution of India.

8. The learned Counsel for the petitioner submits that the dispute between the parties is purely of a civil nature. An agreement in respect of the scrap business was executed by the petitioner in favour of respondent no.2 on 18.07.2013. The cheques given by the petitioner to

respondent no.2 are alleged to have been dishonoured in the month of March-2014. The F.I.R. has been lodged on 18.11.2015 i.e. after about two and half years from the date of execution of the agreement. This delay has not been explained by respondent no.2. He submits that as per the case of respondent no.2 himself, the cheques were given by way of security, which were misused by respondent no.2. He submits that the ingredients of the offences punishable under Sections 406 and 420 of the I.P.C. are totally absent in the F.I.R. Only because the cheques issued by the petitioner were dishonored, it cannot be said that the petitioner cheated respondent no.2. According to him, the civil dispute cannot be dragged into the criminal court. He contends that respondent no.2 lodged the report against the petitioner maliciously with the sole intention to grab money from him by pressurising him. Relying on the decisions in the cases of **M/s.Indian Oil**

Corporation Vs. M/s. NEPC Indian Ltd. and ors., AIR 2006 SC 2780(1) and Vir Prakash Sharma Vs. Anil Kumar Agarwal and anr., (2007)7 SCC 373, he submits that in the absence of the allegations in the F.I.R. about existence of ingredients of the offences punishable under Sections 406 and 420 of IPC, the criminal proceedings instituted against the petitioner after filing of the Charge Sheet by respondent no.1, are liable to be quashed and set aside. According to him, filing of the said criminal proceedings would be an abuse of process of law. He, therefore, submits that the proceedings instituted against the petitioner may be quashed and set aside.

9. Respondent no.2 filed reply and opposed the petition. Relying on the contents of the said reply, the learned Counsel for respondent no.2 submits that the petitioner made a false representation that respondent no.2 would be given a share in the profit at the rate of Rs.1500/- per

ton of the scrap material weighing 700 tons and induced respondent no.2 to part with a huge amount of Rs.31,50,000/- in order to enable the petitioner to get the contract of purchase of the scrap material from the Pradhikaran. After about 7 days of paying that amount to the petitioner, respondent no.2 asked him of his share in the profit, whereon the petitioner told him that he would be getting an order for lifting the scrap material within next seven days thereof. However, after passing of 7 days when respondent no.2 inquired in the office of the Pradhikaran, he came to know that the petitioner had not at all entered into any contract with the Pradhikaran for purchase of scrap material. He submits that the petitioner intentionally made a false statement of having not lifted the scrap material, though he actually had not entered into any contract to lift the same. These facts themselves are sufficient to disclose the intention of the petitioner to chit respondent

no.2 since inception. He submits that the petitioner issued two cheques in the sum of Rs.10,00,000/- each to respondent no.2 and did not maintain sufficient funds in his account when they were presented for encashment. This fact also indicates that the petitioner had intended to cheat respondent no.2 since inception. He further submits that the petitioner committed breach of the assurance given by him to respondent no.2 to repay his amount and further give the share in the profit in terms of the agreement dated 18.07.2013 and thereby committed criminal breach of trust. He submits that the facts and circumstances emerging from the papers of investigation clearly disclose ingredients of the offences punishable under Sections 420 and 406 of the I.P.C. Therefore, after completion of the investigation, Charge Sheet has been filed against the petitioner and two others. He, therefore, prays that the petition may be dismissed.

10. The learned APP appearing for respondent no.1 supports the case of respondent no.2 and prays that the petition may be dismissed.

11. In paragraph 10 of the judgment in the case of **M/s. Indian Oil Corporation** (supra), it has been held as under :-

"10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

Keeping in view the above-referred observations, it will have to be seen as to whether the ingredients of the offences punishable under Sections 406 and 420 of the I.P.C. are disclosed from the facts and circumstances of the present case.

12. The contents of the report show that contents of the report, that on 16.07.2013, respondent no.2 met the petitioner at Karad, whereon the petitioner represented that he had filled-up a tender for purchase of the scrap material from the Pradhikaran and for that purpose, he was in need of Rs.31,50,000/-. He assured respondent no.2 to give share in the profit at the rate of Rs.1500/- per ton of the scrap material having total weight of 700 tonnes, in case the said amount would be paid to him. It is mentioned in the F.I.R. that relying on that assurance, respondent no.2 paid the amount of Rs.12,50,000/- in cash to the petitioner on 17.07.2013 at his own house at

Aurangabad and remitted the amount of Rs.19,00,000/- from his own account to the account of the petitioner through R.T.G.S. on 18.07.2013. The bank account of the petitioner standing in the name of his business i.e. Saima Scrap Material Kharedi Vikri Kendra, Beed, shows that the amount of Rs.19,00,000/- was actually credited on 18.07.2013 through R.T.G.S. The petitioner is stated to have given two cheques in the sum of Rs.10,00,000/- each to respondent no.2 by way of security. However, the same were dishonored for want of sufficient funds in the account of the petitioner.

13. The agreement dated 18.07.2013 executed by the petitioner in favour of respondent no.2 contains that the petitioner had received Rs.19,00,000/- from respondent no.2 on 18.07.2013 and that the petitioner issued two blank cheques to respondent no.2 by way of security. The said

agreement also contains about the proposed scrap business, which was to be conducted by the petitioner and respondent no.2 jointly.

14. The above facts clearly show that the petitioner, at least, admits that he received the amount of Rs.19,00,000/- from respondent no.2 on 18.07.2013 on the assurance that the said amount would be repaid along with the share in the profit at the rate of Rs.1500/- per ton of the scrap material weighing 700 tones. There is a specific recital in the said agreement that the petitioner has actually taken the contract of lifting 700 tones of the scrap material. It is the specific case of respondent no.2 that the said scrap material was to be lifted from the office of the Pradhikaran, at Karad.

15. The learned Counsel for respondent no.2 pointed out to the letter dated 11.01.2016 issued

by the Executive Engineer, Maharashtra Jeevan Pradhikaran, Karad, wherein it is specifically mentioned that no tender notice was published for sale of the scrap material by his office, no tender was given in favour of Saima Scrap Material Kharedi Vikri Kendra, Beed and that no scrap material was sold out by his office in the year 2013. If that be so, it is prima facie clear that on the false pretext of giving share in the profit to respondent no.2 in the alleged scrap business, the petitioner induced him to part with a huge amount. It is prima facie clear that the agreement dated 18.07.2013 was executed by the petitioner with an ulterior motive to induce respondent no.2 to pay him a huge amount which, otherwise would not have been paid to him by respondent no.2. The petitioner seems to have issued two cheques in favour of respondent no.2 to create confidence in the mind of respondent no.2 about the genuineness of the reasons for which the amount was paid by respondent no.2 to the

petitioner. These circumstances prima facie disclose that the petitioner had an intention to deceive respondent no.2 since inception. In our view, the facts disclosed in the F.I.R. and the papers of the investigation prima facie show the ingredients of the offence of cheating under Section 420 of the I.P.C.

16. For constituting the offence of criminal breach of trust, entrustment of the property is an essential ingredient. In the present case, as seen from the agreement dated 18.07.2013, there is prima facie evidence to show that at least the amount of Rs.19,00,000/- was entrusted by respondent no.2 with the petitioner. The reasons for entrustment of the said amount are already stated above. The petitioner had assured respondent no.2 to return the said amount of Rs.19,00,000/- along with the share in the profit at the rate of Rs.1500/- per ton in respect of 700 tonnes of scrap material.

The petitioner had issued two cheques in favour of respondent no.2 towards security of the said amount. Indisputably, the said cheques were dishonoured for want of sufficient funds in the account of the petitioner. There is nothing on record to show that the petitioner returned the amount that was taken by him from respondent no.2. As such, he converted the said amount for his own use. It is, thus, prima facie clear that the petitioner committed criminal breach of trust by dishonestly converting the said amount for his own use that was entrusted to him by respondent no.2.

17. In the case of **Vir Prakash Sharma** (Supra), it has been held that non-payment or underpayment of the price of goods by itself does not amount to commission of offence of cheating or criminal breach of trust and that it is essentially a civil dispute. In the present case, respondent no.2 has not alleged the offence of cheating and criminal

breach against the petitioner merely because the cheques issued by the petitioner were dishonoured, but, as stated above, the petitioner induced respondent no.2 to part with a huge amount on the false pretext of giving him a share in the profit in the transaction of 700 tonnes of scrap material of the Pradhikaran, which, in fact, was not offered for sale in the year 2016 by the said Pradhikaran. In view of the distinguishing facts in the present case, the judgment in the case of **Vir Prakash Sharma** (supra) would not be helpful to the petitioner to advance his case.

18. The contention about the delay in lodging the F.I.R. cannot be considered at this stage, more particularly when the case is depending on the documentary evidence. The petitioner, however, may agitate this contention before the trial Court at the appropriate stage.

19. In the above facts and circumstances of the case, we are not inclined to exercise the powers under Article 226 of the Constitution of India to quash the criminal proceedings instituted against the petitioner. We make it clear that the observations made in the forgoing paragraphs would not influence the merits of the case to be finally considered by the Trial Court. In the result, the order :-

- (i) The Criminal Writ Petition is dismissed.
- (ii) Rule stands discharged.
- (iii) Criminal Application No.2191 of 2016 stands disposed of.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]