

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3319 OF 2007

1. Sachin S/o. Arvind Kelkar,
Age. 40 years, Occu. Business of
Proprietor, Triace Computers
Solutions,
R/o. T-6/1201, Sea-Bieeze,
Nerul, New Mumbai,
Presently residing at A-1104,
Meridian Apartments,
Nerul (West), New Mumbai. ...Applicant.

Versus

1. Sachin S/o. Vinod Shah,
Age. 28 years, Occu. Business,
Owner of Shri. Balaji Infotech,
R/o. E-6, Unity Chambers,
Ganesh Colony, Jalgaon,
Dist. Jalgaon.
2. State of Maharashtra. ...Respondents.

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Mr. N.B. Suryawanshi, Advocate for the applicant
Mr. S.P. Tiwari, A.P.P. for respondent No.2
None for respondent No.1 though served.

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CORAM : V. K. JADHAV, J.
DATED : 16th NOVEMBER, 2016

ORAL JUDGMENT:-

1. The applicant-original accused is seeking quashment and setting aside the proceedings of R.C.C. No. 758 of 2005 pending before the learned Chief Judicial Magistrate, Jalgaon.

2. Brief facts, giving rise to the present criminal application, are as follows:-

a) The applicant is sole proprietor of Triace Computer Solutions (hereinafter called as "TCS" for short) and does consultancy in outsourcing. Respondent No.1 is the owner of Shri Balaji Infotech (hereinafter called as "SBIT" for short). On 20.8.2004, an agreement was entered into between TCS and SBIT and in terms of the said agreement, an amount of Rs.3,75,000/- was paid to the applicant towards processing fees. On 21.5.2005, the respondent SBIT issued notice to the applicant TCS, alleging the violation of terms of the agreement and thus, claimed damages/compensation alongwith interest and also threatened to prosecute the applicant, if compensation and cost is not paid. The applicant, in due course, has replied the said notice, denying allegations in toto. However, on 2.12.2005, respondent SBIT has lodged a private complaint bearing R.C.C. No. 758 of 2005, against the applicant before the learned Chief Judicial Magistrate, Jalgaon for the offences punishable under Sections 406 and 420 of I.P.C. The applicant thus, filed present application praying therein for quashing and setting aside the said R.C.C. No. 758 of 2005, on various grounds.

3. Learned counsel for the applicant submits that the dispute is

essentially of civil nature and does not make out any criminal offence. Learned counsel, by inviting attention of this court towards clauses 4 and 5 of the agreement, points out that though every efforts are made by the applicant TCS to procure the business for SBIT during the tenure of the agreement, the applicant TCS is under no obligation in case it is unable to secure the same. In consideration of the services rendered by TCS for data processing project, mentioned in Annexure-1, the SBIT paid an initial marketing fee for Rs.3,75,000/- and the said fees was towards processing charges. Learned counsel submits that even the respondent SBIT in the legal notice dated 21.5.2005, issued to the applicant TCS, in para 4 clause F, accepted that the respondent SBIT was bound to execute the bank guarantee within one week from the date of payment. It has also specifically mentioned in the said notice that the applicant TCS has violated the terms and conditions of the agreement and thus, the agreement stands cancelled w.e.f. 21.5.2005 and that the applicant TCS is liable to refund the said processing fees of Rs.3,75,000/- with interest within certain period. It has also stated in the said notice that in case such refund is not made, the applicant will have to face the criminal prosecution for the offences punishable under Sections 420 and 406 of I.P.C.

Learned counsel for the applicant submits that the applicant TCS has denied the allegations made in the said legal notice and replied that as per clause 5 of Annexure-I, respondent SBIT supposed to give bank

guarantee within one week from the date of agreement and since respondent SBIT failed and neglected to furnish the bank guarantee within that period, applicant TCS is not under obligation to procure business for the respondent SBIT. Learned counsel submits that initially, learned Magistrate has directed police investigation, as provided under Section 202 of Cr.P.C. and during the said investigation, statement of present applicant came to be recorded by the police. It has brought to the notice that on 15.9.2004, the applicant TCS tried to procure the business from the company located at Singapore and even though the said proposal was submitted to the respondent SBIT, it was not accepted by the respondent SBIT for the reason best known to it. The dispute may give rise to the civil remedy as well as the criminal prosecution. However, every breach of contract would not give rise to criminal prosecution when there are no allegations that the deception played at the very inception of the agreement. Learned counsel submits that continuation of proceeding of said R.C.C. No. 758 of 2005, pending before Chief Judicial Magistrate, Jalgaon would be an abuse of Court process and the said proceedings are thus liable to be quashed and set aside.

Learned counsel for the applicant, in order to substantiate his submissions, placed reliance on the judgments of Supreme Court, in the following cases:-

I) Ram Biraji Devi and Anr. vs. Umesh Kumar Singh and Anr, reported in 2006 ALL MR (Cri.) 2402 (S.C.)

II) Madhavrao Jiwaji Rao Scindia and Anr. vs. Sambhajirao Chadrojirao Angre and others reported in AIR 1988 S.C. 709.

III) Chandran Ratnaswami vs. K.C. Palanisamy and others reported in (2013) 6 S.C.C. 740.

4. None present for the respondent-original complainant, though duly served.

5. I have also heard learned A.P.P. for the respondent No.2-State.

6. On careful perusal of complaint, it appears that the dispute between applicant and respondent was essentially a civil dispute pertaining to settlement of accounts. One of the essential ingredients is in respect of offence of breach of trust or even cheating at the time of entering into an agreement that there must be dishonest intention on the part of the persons, who are intending to cheat. In the instant case, admittedly, the agreement was executed between the applicant and the respondent and in compliance with the terms and conditions of said agreement, both the parties acted on it to some extent. I need not go into the clauses of the agreement to find out as to who is at fault, as the same may affect the civil dispute, if any, pending between the parties.

However, on careful perusal of the complaint, I find that there are absolutely no allegations in the complaint that since inception, the deception was played. On the other hand, it is a matter of record that the respondent SBIT has paid certain amount to the applicant TCS towards processing charges knowing fully well that as per the terms and conditions of the agreement, the applicant TCS is under no obligation in case it is unable to secure the business for respondent SBIT during tenure of the agreement. Furthermore, it is also part of record that the applicant accused has procured the business with one company situated at Singapore in compliance with certain clauses of the agreement. As per clause 4 of the agreement, respondent SBIT has turned down the offer given by the applicant TCS for the reason whatsoever and the said proposal, involving the company situated at Singapore, has been turned down. It is also a part of record that respondent SBIT has not executed bank guarantee as per the terms and conditions of the agreement. It is thus clear that the dispute is basically of civil nature and ingredients of alleged offence of cheating or criminal breach of trust, even accepting the allegations in the complaint as it is, are not attracted.

7. In the case of ***Uma Shankar Gopalika vs. State of Bihar, reported in (2005) 10 SCC 336*** referred by the Supreme Court in the case of ***Chandran Ratnaswami vs. K.C. Palanisamy and others (supra)***, relied upon by learned counsel for the applicant, in para 6 and

7 of the said case, the Supreme Court has made following observations:-

“6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-B IPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs. 4,20,000, they would pay a sum of Rs. 2,60,000 to the complainant out of that but the same has never been paid. Apart from that there is no other allegation in the petition of complaint. It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the Consumer Forum in relation to the claim of Rs. 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC.”

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by

exercising the powers under Section 482 CrPC which it has erroneously refused.”

8. In the instant case, the complaint does not disclose any criminal offence at all and the case is of purely civil dispute between the parties for which remedy lies before the civil court by instituting a suit. In the light of above observations, I proceed to pass the following order:-

O R D E R

- I. Criminal application is hereby allowed in terms of prayer clause “B”.
- II. Rule is made absolute in the above terms
- III. Criminal application is disposed of accordingly.

(V. K. JADHAV, J.)

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