IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1924 OF 2003

1. Kirtibai s/o Premraj Jain,
Age: about 45 years, Occu:
Business and Managing
Director, Esskay Pharmaceuticals Ltd.
42, Urmi Society, Baroda,
(Gujrat).

2. Esskay Pharmaceuticals Limited,
Having its registered office at
Plot No. 75, Sokhda,
Mukutnagar Road,
Village Manjusar, Tq. Savli,
District: Baroda (Gujarat). ...applicants

Versus

1. Ashok S/o Narayan Bagade,
Age: 43 years, Occu: Business,
R/o Priti Apartments, M.J. College
Road, Jalgaon, Dist. Jalgaon.

2. The State of Maharashtra. ...Respondents

...
Advocate for Applicant : Ms. H. S. Dholkawalla & Mr. Mr. G. A. Kulkarni.
APP for Respondent No.2: Mr. A.R. Kale
.....

CORAM : V. K. JADHAV, J.
DATED : 1st SEPTEMBER, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the order dated 4.9.1999 passed by the learned J.M.F.C. Jalgaon in R.C.C. No. 273 of 1999, thereby issuing process for the offences punishable under Sections 406, 418, 420

r.w. 34 of I.P.C. against the applicants original accused 1 and 2, this criminal application has been filed.

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

a) The applicant company deals with manufacturing of pharmaceuticals products and marked all over India. Respondent No.1 is the original complainant, who was appointed as Carting and Forwarding Agent (for short "C. and F." agent) on 2.2.1999 of the company for Jalgaon area. In compliance with the terms and conditions of the agreement executed between the parties, respondent No.1 complainant deposited initially an amount of Rs.1,00,000/- and thereafter of Rs.7,00,000/- with the applicant company. However, thereafter due to some financial loss sustained by applicant company, the company gave a letter to respondent No.1 complainant, contending therein that the company does not wish to continue him as an agent and further assured him to clear his dues. Being aggrieved by the same, respondent No.1 complainant lodged a complaint to police station. The concerned police, finding that the dispute is purely of civil nature, informed him accordingly. Consequently, respondent No.1 complainant filed private complaint before the J.M.F.C. Jalgaon. The learned J.M.F.C. after reading the complaint and verification statement of respondent No.1 complainant and on perusal of the documents filed on record, found a prima facie case against the applicants accused and accordingly issued process against the applicants for the offences punishable under Sections 406, 418, 420 r.w. 34 of I.P.C. Hence, this criminal application for quashing of order of issuance of process passed by the learned J.M.F.C. at Jalgaon, as aforesaid.

3. Learned counsel for the applicants submits that in the year 1997-98, the applicant company sustained heavy loss due to storm at Kandla Port and submerger of a loaded sheet full of drug cartilage which were to be exported by the applicant company abroad. Consequently, the company had started manufacturing the drugs anticides, cough syrups, drugs relating to digestive system etc. However, the applicant company could not come out from the financial losses sustained by it. Thus, the applicant company has published an advertisement in daily newspaper “Times of India” for appointment of C. and F. agent for the company. In response to the said advertisement, the respondent complainant had approached the company and accordingly an agreement came to be executed between them. In compliance with the terms and conditions of the said agreement, by way of security deposit, the respondent complainant has deposited Rs.1,00,000/- and thereafter

Rs.7,00,000/- with the applicant company and the same is not disputed by the applicant company. The respondent complainant however, found it is difficult to go with the applicant company and called upon the applicant company to refund the deposit. Before executing the agreement, even the respondent complainant has paid visit to the company at Baroda to verify the functioning of the applicant company. Furthermore, he had a personal talks with applicant original accused Nos. 1, 3 to 6 at Baroda. After satisfying himself, respondent complainant entered into an agreement with the applicant company and accordingly deposited the security amount in compliance with the terms and conditions of the said agreement. Learned counsel submits that there is no substance in the allegations of the complainant that respondent complainant came to be appointed as C and F agent merely as show and after procuring the said amount from him, said C and F agency alloted in his favour came to be cancelled with some ulterior motive. The dispute is of civil nature. The applicant company has also became sick. The applicant company has never denied the amount deposited by the respondent complainant. The respondent complainant is in the list of unsecured creditors and the applicant company has also issued letter informing the respondent complainant that company would be clearing his dues at the earliest. Learned counsel submits that in the given set of allegations, ingredients of Sections 406, 418 and 420 are not at all attracted.

Learned counsel for the applicants places reliance on the judgment of Delhi High Court in the case of ***Ramesh Chandra Parida vs. Sachdeva College Ltd.*** reported in ***2012 (0) AIJ-DL 1357122.***

4. The respondent original complainant though duly served, remained absent.

5. Learned A.P.P. submits that though respondent complainant was appointed as C and F agent on 2.2.1999, his appointment came to be terminated within four months i.e. on 1.6.1999 without assigning any reason. There is substance in the allegations of the complainant that the right from inception i.e. from the date of appointment as C and F agent, fraud was being played and accordingly the applicant company has prima facie committed breach of trust as well as cheated the respondent complainant.

6. On careful perusal of contents of the complaint, it appears that the applicant company had given advertisement in daily newspaper “Times of India” for appointment as C and F agent for Jalgaon area. In response to the said advertisement, the respondent complainant

had approached the officials of the said company at Khar, Mumbai and even on 14.1.1999, the respondent complainant had visited the head office of applicant company at Baroda. Thereafter, there was meeting between the respondent complainant and the applicant accused Nos. 1 and 3 to 6. It has also stated in the complaint that thereafter, the applicant company has sent one Field Commercial Manager i.e. accused No.4 to Jalgaon and accordingly an agreement for appointment of respondent complainant as C. and F. agent was executed. Accordingly, respondent complainant though initially paid Rs.1,00,000/- as security deposit, also paid Rs.7,00,000/- to the applicant company through demand draft. Even on 18.2.1999, the applicant company has directed respondent complainant to deposit Rs.20,000/- for giving promotional gift to the agents. Even it has also stated in para 5 of the complaint that the applicant company has prepared a draft of work sheet being assigned to the respondent complainant. Even it has contended in the complaint that certain goods also came to be distributed to the respondent complainant though it is alleged in the compliant that the said goods were lying with C and F agent at Pune. However, it appears that in terms of talks between respondent complainant and the applicant accused, an agreement came to be executed between them and in terms of said agreement, security deposit was also accepted and certain goods also came to be distributed to the respondent in terms of draft of work sheet prepared mutually. It is not the case that said company is not at all in existence and that the applicant persons are not Directors of the said company.

7. Thus in the given set of facts, it appears that the dispute is of civil nature. I do not find any substance in the contention that the applicant company has given said advertisement as a show and the appointment of C and F agent of respondent complainant is merely on paper. The agreement came to be executed between the parties and in compliance with the terms and conditions of the said agreement, the amount towards security deposit came to be accepted by the applicant company. Furthermore, the applicant company never denied its liability to clear the dues. Even respondent complainant is placed in the list of unsecured creditors since the company become sick afterwards.

8. In case of ***Ramesh Chandra Parida vs. Sachdeva College Ltd. (supra)*** relied upon by learned counsel for the applicants in para 5 of the judgment, Delhi High Court has observed that the dispute between the applicants and the respondent therein was essentially a civil dispute pertaining to the settlement of accounts. It has also observed that one of the essential ingredients in respect of offence of breach of trust or even cheating at the time of entering into an

agreement, there must be dishonest intention on the part of the persons, who are intending to cheat. In the instant case, admittedly, an agreement was entered into between the parties and in compliance with the terms and conditions of the said agreement, both the parties acted on it. It was only when the said agreement came to be terminated, respondent complainant raised a dispute about settlement of his accounts.

9. It thus appears that the civil dispute has been converted into criminal case. I do not find any dishonest intention on the part of the applicants accused even accepting the allegations made in the complaint as it is. In the given set of allegations, the ingredients under Sections 406, 418, 420 are not at all attracted. Hence, I proceed to pass the following order:-

O R D E R

I. Criminal application is hereby allowed in terms of prayer clause “B”, as against present applicants.

II. Criminal application is disposed of. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

rlj/