IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.33 OF 2016

Mr. T. Chandramouli,
42 years of Age,
Son of Late P. Thiagarajan,
Residing at Sai-Krupa,
No.5/37, Marakayar Nagar,
1st Street, Neelankarai,
Chennai- 600015. … Petitioner

V/s.

1 Police Inspector,
Vasco Police Station,
Vasco – Goa.

2 Mr. K.A. Narasimhan,
Major of age,
Residing at A8,
Aditya Apartments,
Ranghvi Estate,
Bogmalo Beach Road,
Dabolim, Vasco- Goa. … Respondents.

Shri A. D. Bhobe, Advocate for the petitioners.

Shri S. R. Rivankar, Public Prosecutor for the respondent no.1.

Shri A. Gosavi, Advocate for the respondent no.2.

CORAM : F.M.REIS &

NUTAN D.SARDESSAI, JJ.

Reserved on: 27th September,2016.

Pronounced on: 29th September,2016.

JUDGMENT: (PER NUTAN D. SARDESSAI, J.)

1. Heard Shri A. D. Bhobe, learned Advocate appearing for

the Petitioner, Mr. S. R. Rivankar, learned Public Prosecutor appearing for the Respondent no.1 and Mr. A. Gosavi, learned Advocate appearing for the Respondent no.2.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents, waive service.

3. The above Petition seeks, inter alia, to quash and set aside the FIR bearing no.163 of 2015 registered with the Vasco Police Station for the offences punishable under Sections 417, 420, 506(ii) r/w.34 of the Indian Penal Code.

4. Shri A.D. Bhobe, learned Counsel for the petitioner adverted to the complaint and submitted that none of the ingredients of the offence of cheating were made out nor those of the offences of the cheating and dishonestly inducing a person deceived to deliver any property to any person and therefore it was a fit case to quash the F.I.R.. Moreover there was a civil proceeding and arbitration proceedings between the parties and an attempt was made to criminalize the civil transactions by these proceedings. The complaint was an attempt at an abuse of the process of law and therefore it was a fit case to quash the F.I.R.

He relied in **Sussanne Khan v/s. The State of Goa and others** (Criminal Writ Petition No.87 of 2016) and the reply while wrapping up his arguments and pressing for quashing of the F.I.R. Shri S.R. Rivankar, learned Public Prosecutor on behalf of the respondent no.1 submitted that the investigation was in progress. Shri A. Gosavi, learned Advocate for the respondent no.2 first addressed on the aspect of a civil dispute being propagated by the petitioner and submitted that even if it was so, it was not a fit case for quashing of the F.I.R. He relied in **Indian Oil Corpn. V/s. NEPC India Ltd. And others** [(2006)6 SCC 736] and **R. Kalyani v/s. Janak C. Mehta and others** [(2009) 1 SCC 516] to substantiate his contention that even if there was a civil dispute, still it was not a fit case to quash the FIR.

5. We have examined the complaint at great length from which it is borne out that the complainant - respondent no.2 had become acquainted with the petitioner and his sister since 2006, became family friends in the course of time and that on account of their friendly and family relations he had given to the petitioner and his sister an amount of ₹1,68,00,000/- (Rupees One Crore and Sixty Eight lakhs) between December, 2010 till October, 2013 in different installments and through the banking channels. They had received the amounts from him on the pretext of certain urgent

family commitments and in lieu thereof had promised to transfer the premises measuring 1550 sq.ft. at Chennai owned by them and agreed to transfer the said property to him. They had not kept their promise of transferring the said property to him as promised and quite on the contrary it was informed to him that the petitioner's sister had to go to U.S. urgently while once again reiterating their commitment to execute the Sale Deed.

6. It was also the case of the respondent no.2 - Complainant in his complaint that they had kept on dragging the transaction and had not executed the Sale Deed and that the petitioner was instrumental in convincing him that he would persuade his sister to complete one transaction and on believing his words, he even footed the bill of the petitioner and his wife travelling to U.S. in 2014. He was further persuaded by the petitioner to advance a sum of ₹25,00,000/- for purchasing one property at Kannappan Nagar belonging to Mr. R.V. Ramani and he arranged the said amount. There was a passage of 48 months and even then the petitioner and his sister did not execute a Sale Deed in his favour and instead offered to transfer four flats in Siruseri belonging to Shri Ramani. Nowhere it is apparent from the tenor of his complaint that there was an element of cheating by the petitioner and to induce the complainant to deliver the cash to him

from time to time.

7. The respondent no.2 - Complainant in his reply had otherwise stated that a commercial transaction or a contractual dispute apart from furnishing a cause of action for seeking a remedy in civil law may also involve a criminal offence. As the nature and a scope of the civil proceedings are different from the criminal proceedings, the mere fact that the complaint relates to the commercial transaction or the breach of the contract, for which a civil remedy is available by itself is not a ground to quash the proceedings and the test being whether the allegations in the complaint disclose a criminal offence or not. Besides the complainant- respondent no.2 had supported the case of the petitioner that he had advanced money in an amount of ₹1,68,00,000/- to the petitioner and his sister from time to time between December 2010 till October 2013 as they were facing financial crisis.

8. Nowhere was it spelt out even in his affidavit that there was any element of cheating or deception used by the petitioner to say that the complainant parted with the money in his favour and that of his sister. Rather the tenor of his affidavit too would support the petitioner's case that there were transactions between them to

transfer the premises and which did not materialise and even at that point of time he had parted with an amount of ₹25,00,000/- in favour of the petitioner. If at all his case is to be believed that the petitioner was guilty of deceiving him and inducing him to part with the money, it would fail to stand the test of scrutiny why the complainant - respondent no.2 had still parted with the additional amount in favour of the petitioner. The reply too reflects that there were civil transactions between them.

8. Cheating is defined under Section 415 of I.P.C. and reads thus :

> "415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

Section 417 of I.P.C. deals with the punishment for cheating while Section 420 I.P.C. deals with the offence of the cheating and dishonestly inducing the delivery of property and reads thus :

"417. Punishment for cheating.—Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

10. At the cost of repetition it is apparent that the complaint does not at all fulfill the pre-requisites of any of these offences and quite on the contrary it is apparent on the nature of grievance made forthwith in the complaint that there is a civil dispute between the parties. It was also not in dispute that the petitioner and the complainant are also in arbitration proceedings before the Arbitral Tribunal, Chennai. Rather it reflects that the transactions between the petitioner and the respondent no.2 were commercial in nature and in pursuance thereof the money changed hands from the complainant purportedly to the petitioner. There were also agreements between the parties in respect of the transactions of premises and thus looking to the entire tenor of the complaint, it is apparent that the complaint is an attempt to criminalize the civil transaction between the parties. Moreover it is apparent that all the transactions which took place between the petitioner and the respondent no.2 had taken place in Chennai and yet the respondent no.2 had filed the complaint and got the F.I.R. registered against the petitioner in Goa which as per the contention of the petitioner was on account of the refusal of the Chennai Police to register the offence at his instance since the matter involved a

civil dispute and there was no criminality attached thereto.

11. In **Sussanne Khan** (supra), to which we were parties, it was held that "unless such allegations are spelt out in the complaint, a person cannot be foisted with a criminal liability as the only right that the Complainant can acquire in such circumstances is a remedy for breach of the contract in the Civil Court. Mere breach of a contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction." The Apex Court in **ARCI vs. Nimra Cerglass Technics (P) Ltd.**[2016(1) SCC 318] was considered where it was observed that if on an analysis of the terms and conditions of the agreement between the parties, the dispute between the parties appears to be purely of a civil nature, it was a settled legal proposition that criminal liability should not be imposed in disputes of civil nature.

12. In **Indian Oil Corpn.** (supra), the Hon'ble Apex Court set out the principles relating to the exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash the complaints and criminal proceedings namely :

> (i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any

offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of the civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. In **R. Kalyani** (supra), the Hon'ble Apex Court considered the judgment in **State of Haryana & Ors. v. Bhajan Lal & Ors.** [1992 SCC (Cri.) 426], which laid down the guidelines in the matter of exercise of the extraordinary powers under Article 226 or the inherent powers under Section 482 of the Code and held that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. Nonetheless, it extracted and reproduced the following categories of cases by way of illustration wherein such power could be exercised either to prevent an abuse of the process of any Court or otherwise to secure the ends of justice namely:

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and

other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2)of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. ....

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. ....

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

14. In **R. Kalyani** (supra), the Hon'ble Apex Court considered the various judgments and culled out the propositions of law namely :

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a

First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

15. In **R. Kalyani** (supra), at the same time, Their Lordship observed that no hard and fast rule could be laid down and each case had to be considered on its own merits and in the facts at large found that there was no reason to interfere with the findings of the High Court quashing the proceedings and dismissed the appeal. The principles culled out in **Indian Oil Corpn.** (supra), have been considered but which do not at all buttress the case of the respondent no.2 - complainant that the offences of cheating or deceiving dishonestly inducing the respondent no.2 to deliver the property have been made out. Rather it is apparent that the parties are in civil dispute and there are arbitral proceedings too

and that after the respondent no.2 has been unsuccessful in registering the F.I.R. against the petitioner before the Chennai Police has taken recourse to the local Police Station to register the F.I.R. against the petitioner. The entire transactions between the parties on the face of it was civil and which was sought to be criminalized and therefore the petitioner is bound to succeed.

16. In view thereof, we find that the complaint filed by the respondent no.2 is an abuse of the criminal process and consequently for the reasons stated herein above, the F.I.R. No.163 of 2015 dated 03/12/2015 is quashed and set aside.

17. Rule is made absolute accordingly.

NUTAN D. SARDESSAI, J. **F. M. REIS, J.**

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