FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 219 OF 2016

Office Notes, Office Memorandam of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. Prasad Pathare for the Applicant.
Smt. M.R.Tidke, APP. for the State.
Smt. Bina Jariwal i/by Aurama Law for Respondent No.2.

CORAM : A.S.GADKARI, J.
DATE : 18th July, 2016

P.C.

By the present application under Section 484 of the Code of Criminal Procedure, the applicants have challenged the order dated 22.9.2015 passed by the learned Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai in C.C.No.43/SW/2014. By the said order dated 22.9.2015, the learned Trial Court has issued the process against the applicants for the offence punishable under Section 406 and 420 of the Indian Penal Code.

2) The applicants are the original accused in the afore stated complaint. After the complaint is filed by respondent No.2, verification statement of the complainant was recorded. The learned Magistrate by its order dated 4.8.2014 directed the Azad Maidan Police Station to make enquiry under Section 202 of the Code of Criminal Procedure and submit its report. The police after conducting the enquiry submitted its report dated 31.10.2014 before

the Trial Court. The Trial Court after taking into consideration the verification statement and the report under Section 202 of the Code of Criminal Procedure was pleased to issue process against the applicants by impugned order dated 22.9.2015.

3) It is the specific case of the complainant that the Applicant No.2 represented himself to be the owner of Applicant No.1 and won the confidence of respondent No.2. The respondent No.2 provided the necessary commercial services as was required by applicant No.2. It is the further case of the complainant-respondent No.2 that after providing the services for substantial period the applicants herein avoided, neglected and failed to pay the legitimate dues of the respondent No.2. The respondent No.2 thereafter issued notice to the applicants. The applicants on one or other pretext and by raising false pleas did not make the payment of the legitimate dues of the respondent No.2. In the premise, the respondent No.2 has filed the afore-stated complaint.

4) I have perused the complaint and also the report submitted by the police dated 31.10.2014. According to me a strong prima facie case to issue process under Section 406 and 420 of the Indian Penal Code is made out. Though, it is stated in the police report that the the applicant No.2 is trying to misled the Investigating Agency by taking different stands that, the applicant No.2 is managing partner of applicant No.1 and he is also Director of the same. This further endorses the grievance of the complainant that the applicant No.2 since beginning was having dishonest intention to cheat the respondent No.2. The learned counsel for the applicant submitted that the averments in the complaint are vague

and made only with a view to cover the delay in lodging complaint for offence under Section 406 and 420 of the Indian Penal Code and as has been mentioned in the complaint. It is to be noted here that the transaction noted in the compliant is spreading over for a considerable period. Prima facie, I am of the opinion that the said complainant thus filed is within the period of limitation and on that count alone cannot be dismissed. As stated earlier a strong prima facie case is made out against the applicants in the complaint and the Trial Court has correctly issued the process thereof. No interference by this Court is therefore, warranted. The application is devoid of any merits and is therefore, dismissed.

(A.S. GADKARI, J.)