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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 494 OF 2016

M/s Lalit Polyster Pvt. Ltd. & Ors.

..Applicants

Vs.

M/s Shambhulal A. Shah & Co. & Anr.

..Respondents

Mr. Dinesh Dubey i/b Ravi Agarwal for Applicants.

Mr. A.H. Ponda a/w Ms. Pravina Thakker for Respondent No.1.

Ms. P.P. Bhosale, APP for State.

CORAM: A.S. GADKARI, J.**DATE : 10th June 2016.****P.C.**

1 The present application under Section 482 of Cr. P.C. is filed, challenging the Judgment and Order dated 22.4.2016 passed by the learned Additional Sessions Judge, Greater Mumbai in Revision Application No.195 of 2016 thereby confirming the order dated 23.11.2015 passed by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, issuing process against the applicants for an offence under Section 138 read with 141 of the Negotiable Instruments Act.

2 The applicants are the accused in complaint bearing CC No.846/SS/2015 (4780/SS/2015) pending on the file of the learned Metropolitan Magistrate at Ballard Pier, Mumbai under Section 138 of the Negotiable Instruments Act. The respondent No.1 is the original

complainant. The said complaint is filed on the premise that the applicants herein though issued the negotiable instrument towards their legal liability for an amount of Rs.1 Crore, the said came to be dishonoured on its presentation. The learned Magistrate after perusal of the complaint and after recording the statements, was pleased to issue process against the applicants as stated earlier. The Revision Application bearing No.195 of 2016 preferred by the applicants has been turned down by the Revisional Court by its Judgment and Order dated 22.4.2016 which is impugned herein.

3 Heard the learned Counsel for the applicants and the learned Counsel for the respondents and also perused the entire record produced before me.

4 The learned Counsel for the applicants submitted that the complainant itself has annexed a letter of confirmation to the complaint mentioning an amount of Rs.90,56,669/- as outstanding dues payable by the applicants to the respondents. He submitted that though the applicants have issued a cheque of Rs.1 Crore for and in favour of the applicants, his admitted liability is restricted to Rs.90,56,669/- and in view thereof a notice issued by the Advocate for the respondent-Complainant claiming an amount of Rs.1,62,22,513/- is bad in law, because by the said notice the

complainant has exceeded his demand than the admitted one. He submitted that as the notice itself is bad in law, the complaint is not maintainable and the process issued thereunder is necessarily to be quashed. He further submitted that both the Courts below committed error firstly in issuing process and secondly by confirming the same. In support of his contention, he relied upon two decisions namely (1) M/s Rahul Builders Vs. M/s Arihant Fertilizers & Chemical & Anr. of the Supreme Court in Appeal (Cri.) No.525 of 2005 dated 2.11.2007 and (2) Ramnarayan s/o Madanlal Vs. Proprietor, Daulat Enterprises reported in (2007) BC 390: 2005(4) Mh. LJ 796. He therefore prayed that the complaint filed by the respondent No.1 may be quashed and the present application may be allowed.

5 Mr. Ponda, the learned Counsel for the respondent No.1 per contra opposed the present application and submitted that the complainant has placed reliance on the said confirmation letter only to substantiate its part of the claim. That as a matter of fact, the complainant has demanded an amount of Rs.1,62,22,513/- by his notice dated 12.3.2015 and in furtherance thereof the applicants while honouring its legal obligation have issued the said negotiable instrument which is in question. He lastly submitted that the present application being devoid of any merits, may be dismissed.

6 It is settled by a long course of decisions of the Supreme Court that for the purpose of exercising its power under Section 482 of Cr. P.C. to quash a F.I.R. or a complaint, the High Court would have to proceed entirely on the basis of allegations made in the complaint or the documents accompanying the same per se. If the allegations in the complaint taken at their face value disclose a criminal offence, complaint cannot be quashed, merely because it relates to commercial transaction of breach of contract for which civil remedy is available or has been availed. It is further held that the High Court is not supposed to embark upon the enquiry whether the allegations in the FIR/complaint are reliable or not and thereupon to render a definite finding about the truthfulness or veracity of the allegations. It is also settled that the High Court can exercise such power in exceptional cases and when the defence of the accused can be accepted on the basis of documents as contemplated under the Evidence Act. It is also held that the power under Section 482 of Cr. P.C. should be exercised, only to save the abuse of process of Court or to secure the ends of justice. It is further held by the Supreme Court that, it is of course open to the accused at the trial to take whatever defence that were open to him, but High Court need not deal with the merits of the case at the stage of quashing of proceeding.

7 After taking into consideration the aforesaid legal position, it

is clear from the record of the present case that after the respondent issued a notice thereby demanding an amount of Rs.1,62,22,513/-, in furtherance of lawful obligation, applicants herein issued the negotiable instrument for Rs.1 Crore for and in favour of the respondent No.1 which ultimately is dishonoured on its presentation and on the basis of the said dishonoured negotiable instrument, the respondent No.1 has instituted the present complaint. I am of the considered view that the complainant has made out a strong prima facie case to proceed against the applicants before the Trial Court. As far as the contention of the learned Counsel for the applicants, that undated cheque was kept in the custody of the complainant and the same was subsequently misused, it is for the applicants to prove the said fact at the time of trial.

8 As stated hereinabove, according to me the complainant/respondent No.1 has made out a strong prima facie case of issuance of process. In my considered view both the Courts below have not committed any error either in law or on facts and interference by this Court under Section 482 is not warranted at all. I find no merits in the present application and the same is accordingly dismissed.

(A.S. GADKARI,J.)