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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 480 of 2015.

Konkan Vikas Development Limited & Ors. ..Applicants.

Vs

The State of Maharashtra & others ..Respondents.

Mr. Amit Agashe a/with Sandeep Phatak for the
applicants.

Smt. G.P. Mulekar, APP for the State.

Mr. S.R. Ronghe for the Respondent No.2.

CORAM : A.S.GADKARI, J.

DATE : 19th July, 2016

P.C.

1) By the present application under Section 482 of the Code of Criminal Procedure, the complainant has prayed that the complaint No. 12/2015 filed by the respondent No.2 - original complainant, before the learned Judicial Magistrate, First Class, Dapoli, District Ratnagiri, be quashed and set aside.

2) Heard the learned counsel for the applicants and the learned counsel for the respondent No.2 and also perused the

record annexed to the present application.

3) The respondent No.2 – original complainant has filed a private complaint against the applicants in the Court of the Judicial Magistrate, First Class, Dapoli bearing Criminal Complaint No.12/2015 on 11/2/2015 for the alleged offences under sections 406, 409, 420, 463, 464, 467, 468, 471, 474, 506 read with section 34 of the Indian Penal Code and under section 82 of the Indian Registration Act, 1908. The Trial Court after recording the verification and after hearing the complainant, was pleased to issue process by its Order dated 26/2/2015 under sections 406, 409, 463, 464, 467, 468, 471, 474, 506 read with section 34 of the Indian Penal Code and under section 82 of the Indian Registration Act, 1908.

4) The learned counsel appearing for the applicants submitted that while issuing the process, the learned Trial Court has not taken into consideration the proceedings pending before the Arbitrator and other documents pertaining to their partnership transactions and has issued the process. He submitted that for constituting the offences punishable under

sections 467, 468, 471 of the IPC, there is no evidence on record to show that the applicants herein have, in fact, committed forgery of any of the document or valuable security. He submitted that to attract the ingredients of offences under sections 406, 409 and 420 of the IPC there must be evidence on record to show that the applicants herein have committed criminal breach of trust, deceived the original complainant and have committed the act of cheating. He further submitted that the applicants and the respondent no.2 were Partners in the business and the respondent no.2 is trying to give the colour of criminality to the interse civil transaction. He therefore prayed that, in view of the same, the complaint filed by the Respondent No.2 may be quashed and set aside.

5) Per contra, the learned counsel appearing for the respondent no.2 vehemently opposed the application and submitted that a plain reading of the complaint makes out a prima facie case for the offences alleged by the complainant and the learned Trial Court has therefore rightly issued process against the applicants under the relevant sections. He submitted

that, the present application may be dismissed summarily.

6) It is the settled position of law by a catena of decisions of the Hon'ble Supreme Court that for the purpose of exercising its power under section 482 of Cr.P.C., to quash a first information report (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 a 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 or 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 the legally admissible documents as contemplated under the Evidence Act. It is also held that the

power under section 482 of the 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 the High Court need not deal with the merits of the case at the stage of quashing of proceedings.

7) In view of the above settled principles, a bare reading of the complaint would reveal that the respondent no.2 has specifically mentioned in the complaint that the applicants and the respondent no.2 entered into a partnership and that the applicants by committing deceit, sold the property of the partnership firm to third person. It is the specific contention of the complainant /respondent no.2 that the applicants created and/or prepared, forged and fabricated documents and accepted huge amounts on the basis of the same. It is further stated that though the partnership firm was in existence, the applicants herein effected the booking of the flats/ immovable property standing in the name of the partnership firm and has

committed defalcation of huge amounts of the partnership firm. After carefully reading the entire complaint I am of the considered opinion that the averments made in the complaint clearly makes out a case for the offences as alleged in it and the Trial Court after recording the verification statement of the complainant has issued the process as contemplated under section 204 of Cr.P.C. and therefore the complaint as filed need not be quashed at all.

After perusing the complaint and the documents annexed to it, I am of the further considered view that a strong prima facie case also for issuance of process under section 406, 409, 463, 464, 467, 468, 471, 474, 506 read with section 34 of the Indian Penal Code and under section 82 of the Indian Registration Act, 1908 is made out. I find no merits in the application and the application is accordingly dismissed.

(A.S. GADKARI, J.)