

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2812 OF 2015

Veesons Energy Systems Pvt. Ltd. ... Petitioner.
Versus
Tough Casting Pvt. Ltd. & anr. ... Respondents.

Mr. Anil Agarwal, advocate for petitioner.

Mr. R.M. Pethe, advocate for respondent No. 1.

Mrs. A.A. Mane, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JUNE 14, 2016

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned Counsel for the respondent. Perused the papers.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein happens to be original accused No. 1 in R.C.C. No. 157 of 2013 before the Judicial Magistrate First Class at Vadgaon. The respondent herein had filed a complaint before the Judicial Magistrate First Class at Vadgaon alleging therein that the complainant company is registered with IBR Mumbai and National Sugar Federation. That the original accused No. 2 on behalf of the accused No. 1 approached the complainant and had offered to place an order relating to certain projects of accused No. 1. The accused had placed 3 orders which form part of the complaint.

4 It is the case of the complainant that the accused had represented that the entire payment towards the orders would be made as per the terms and conditions of the payment agreed between the parties. It is on the basis of this assurance given by the Petitioner that the complainant had proceeded to execute the purchase order and had designed, manufactured, supplied and commissioned travelling grate(stoker).

5 That after the project was commissioned, the accused refused to answer the phone calls, emails. The payment was being avoided. There was no communication with the complainant company. In fact, the complainant had completed the project as was agreed between the parties. The project has become functional. However, the accused avoided to make payment and had committed breach of promise and assurance made to the complainant. According to the complainant, the accused had committed an offence punishable under Section 406, 420, 120B, read with section 34 of the Indian Penal Code.

6 The learned Magistrate upon appreciating the recitals of the complaint and recording the verification of the complainant had formed an opinion that the complainant has prima facie made out a case under Section 420 read with Section 34 of the Indian Penal Code and had refused to issue process against the accused under Section

406 and 120B of the Indian Penal Code. The learned Magistrate after application of mind had issued process vide order dated 3/2/2014 against the accused for having committed an offence under Section 420 read with Section 34 of the Indian Penal Code.

7 Being aggrieved by the order of issuance of process, the accused have filed Criminal Revision Application No. 82 of 2014 before the Ad-hoc Additional Sessions Judge-1 at Kolhapur. The learned Sessions Judge had appreciated the documents submitted by the revision applicant. It appears from the order of the learned Revisional Court that the accused had disputed the quality of the work after the project was commissioned. It was also submitted before the Revisional Court that the revision applicant i.e. present Petitioner had suffered huge financial loss. It was also contended that the case arose out of the contractual obligation and therefore, the dispute was civil in nature and therefore, initiation of criminal proceedings would be not justifiable.

8 Learned Revisional Court after taking into consideration all the documents and submissions advanced across the bar is of the opinion that it cannot be prima facie said that there is only civil liability. The Revisional Court had also upheld the order passed by the Judicial Magistrate First Class on the ground that the order passed by the trial Court is legal, proper and correct. It was rightly appreciated by the Revisional Court that the propriety and legality of the order of issue process is limited only to the extent of prima facie case and therefore, by an order dated 3/3/2015, the revision application was rejected. Hence, the present Writ Petition.

9 It appears from the order passed by the learned Judicial Magistrate First Class, Peth, Vadgaon that the learned Magistrate has considered the documents as well as the verification statement of the complainant and had applied his judicial mind at the stage of issuance

of process and therefore, the accused was rightly discharged under Section 406 of the Indian Penal Code at the threshold.

10 It is a matter of record that the complainant has not challenged the order of discharge of the accused under Section 406 read with Section 34 of the Indian Penal Code. It is a warrant triable case. There would be a stage of evidence before charge. That mens rea of the intention to cheat should be right from the inception and the same cannot be proved only on the basis of written complaint. Intention to cheat at the inception would be a factor of mental, psychological faculty of an accused, which will have to be substantiated by recording substantive evidence and hence, it cannot be said that the order of issuance of process is perverse or unwarranted and continuation of the proceedings would be an abuse of process of law. This Court finds no reason to interfere with the order passed by the learned Magistrate, which was upheld by the Revisional Court after appreciation of the case in its proper perspective. Hence, the Petition

being sans merits deserves to be dismissed. Needless to say that the Interim relief granted by this Court (Coram : M.L. Tahaliyani, J, as he then was) vide order dated 28th July, 2015 deserves to be vacated.

11 The Writ Petition stands dismissed. The rule is discharged. The interim relief granted stands vacated.

12 It is made clear that all contentions are kept open.

13 The Writ Petition stands disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)