IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4308 OF 2004

Chimanlal Pharma & Ors. .. Applicants

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr.Bharat H. Mehta for the Applicant.
Mr.C.V.Golwala i/b. V.N.Golawala & Co. for the Respondent No.2
Mr.Y.M.Nakhawa APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : FEBRUARY 16, 2016.

P.C.

1. By this application filed under Section 482 of Cr.P.C. the applicants have sought to quash the order of issuance of process in Criminal Case No.242 of 2004 for the offence under Section 420, 206, 120 r/w. 34 of the Indian Penal Code.

2. The applicant no.1 is a partnership firm. The applicant nos.2 and 3 are the partners of the applicant no.1 firm. The applicants are the dealers in pharmaceuticals. The respondent no.2-complainant

owned and possessed a warehouse godown situated at 35 Shreeji Warehouse Estate, Narol Sarkhej By Pass, Narol, Ahmedabad, Gujrat. The applicant had taken the said warehouse godown on lease initially for a period of three years. The said lease was renewed till 30.6.2001 and thereafter the possession surrendered to the respondent no.2.

3. The respondent no.2 vide legal notice dated 18.2.2004 demanded from the applicants an amount of Rs.1,11,455/- with interest @ 12% towards arrears of municipal tax bills. The applicants replied to the said notice vide reply dated 4.3.2004 denying their liability to pay any amount to the respondent no.2. The respondent no.2 thereafter filed a private compliant before the JMFC, Vashi, being Criminal Case No.248 of 2004 alleging that the applicants herein had failed to honour their promise of paying the municipal taxes. The respondent no.2 complainant therefore claimed that the applicants had willfully not honoured their promise and commitment to pay the municipal taxers with malafide intention of causing wrongful gain to her. The respondent no.2 further

claimed that she has reason to believe that all the applicants had deliberately and willfully with dishonest intention induced her to part with the warehouse godown on the basis of false representation. The respondent no.2 complainant therefore claims that the applicants have committed offence of criminal breach of trust and cheating.

4. Aggrieved by the issuance of process in the said criminal case, the applicants have filed this application.

5. Heard learned Counsel for the applicants and the learned counsel for the respondent no.2. Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. At the outset it may be mentioned that legal principles in regard to quashing of first information report had been considered by the Hon'ble Apex Court in ***State of Haryana & Ors. V/s. Bhajanlal & Ors. 1992 SUPP (1) SCC 335*** and several other subsequent

decisions. Recently in **Rishipal Singh Vs. State of U.P. & Anr (2014) 7 SCC 215** the Apex Court while considering the scope and ambit of section 482 of the Cr.P.C. has held that :

> *"A bare perusal of Section 482 Cr.P.C. makes it crystal clear that the object of exercise of power under this section is to prevent abuse of process of Court and to secure ends of justice. There are no hard and fast rules that can be laid down for the exercise of the extraordinary jurisdiction, but exercising the same is an exception, but not a rule of law. It is no doubt true that there can be no straight jacket formula nor defined parameters to enable a Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The Courts have to be very circumspect while exercising jurisdiction under Section 482 Cr.P.C.*

7. The Apex Court after considering the previous pronouncements has reiterated the guidelines with regard to exercise of jurisdiction by the courts under Section 482 Cr.P.C.

> *"What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings*

> *would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 Cr.P.C. While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact."*

8. Reverting to the facts of the present case, in the instant case it is not in dispute that the respondent no.2 complainant was the owner of the warehouse godown. It is also not in dispute that the applicants and respondent no.2 had entered into an agreement dated 1.6.1991 whereby the said godown was leased to the applicants for an initial period of three years. It is not in dispute that the said lease was renewed and the applicants were in possession of the godown till 30.6.2001. Thereafter they have surrendered the possession of the godown to the respondent no.2.

9. It is not in dispute that the applicants herein had paid the rent to the respondent no.2 in respect of the said warehouse godown. The dispute is only in respect of the payment of the municipal taxes. It is not in dispute that the applicants had paid the amount of Rs.20000/-

towards the municipal arrears by two cheques drawn on Union Bank of India, both dated 31.3.1999. It is also pertinent to note that the applicants had paid the last rent vide cheque no.438837 dated 28.9.2001. The respondent no.2 had issued a receipt for having received the said amount. A perusal of the said receipt indicates that the amount received by the respondent was inclusive of Municipal taxes. These receipts therefore negate the contention of the respondent no.2 as regards non payment of the municipal taxes. Furthermore, the respondent no.2 had issued receipt dated 1.8.2001 acknowledging receipt of possession of the warehouse. The respondent no.2 had not raised any dispute regarding nonpayment of the municipal taxes or any other arrears at the time of taking possession of the said warehouse in the year 2001, but such a claim was raised only in the year 2004.

10. Having considered the averments in the complaint, in my considered view, the complaint does not on the face of it spell out the essential ingredients of the offence of criminal breach of trust or cheating or conspiracy as alleged.

7. The applicants have claimed that the alleged offence had taken place had Ahmedabad and that the Court at Navi Mumbai had no territorial jurisdiction to try the case. Section 177 of Cr.P.C. provides that every offence is ordinarily to be inquired into and tried by the court within whose local jurisdiction it is committed. In the instant case, the records reveal that the warehouse godown is situated at Ahmedabad. The lease agreement was also entered at Ahmedabad. The applicant no.1 has its registered office at Ahmedabad and the applicant nos.2 and 3 being the partners are also the residents of Ahmedabad. The payment of rent as well as the entire transaction in respect of the said godown had taken place at Ahmedabad. The arrears claimed by the respondent no.1 are the municipal taxes which are allegedly paid to the Municipal Corporation at Ahmedabad. It is thus clear that the alleged offence was committed at Ahmedabad and as such the learned Magistrate at Navi Mumbai had no territorial jurisdiction to try the said offence. Furthermore, the respondent no.2 has not made any averment in the complaint as to how the court at Navi Mumbai had jurisdiction to try the said offence.

8. Considering the above facts and circusmtances, in my considered view it is not expedient in the interest of justice to continue these proceedings against the applicants. In the result, the application is allowed. Consequently, the order of issuance of process in Criminal Case No.248 of 2004, passed by the Judicial Magistrate, First Class, Belapur, C.B.D., is hereby quashed and set aside.

(ANUJA PRABHUDESSAI, J.)