

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3670 OF 2014

- | | | |
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| 1. M/s. Ruchitra Textiles Pvt. Ltd., |] | |
| Plot No.E-26, MIDC, Tarapur, |] | |
| Dist. Thane 406506. |] | |
| |] | |
| 2. Jiten Arora |] | |
| Age 30 years, Occu.: Director |] | |
| |] | |
| 3. Deepak Arora |] | |
| Age 54 years, Occu.: Business |] | |
| |] | |
| 4. Rishabh Arora |] | |
| Age 28 years, Occu.: Director |] | |
| |] | |
| All are residing at 15, Deepak Villa, |] | |
| 4 th Road, Vile-Parle (West), Mumbai-400056. |] | Petitioners |

Versus

- | | | |
|-------------------------------------|---|------------------|
| 1. State of Maharashtra |] | |
| |] | |
| 2. T.G. Radhakrishnan |] | |
| Proprietor of Crown Crane Service, |] | |
| B/115, Vishwakarma Paradise, |] | |
| Phase 1, Ambadi Road, Vasai (West), |] | |
| Palghar. |] | Respondents |

Mr. Prakash Naik a/w. Mr. Shreyas R.
Mithare, for the Petitioners.

Mr. H.J. Dedia, A.P.P., for Respondent No.1-
State.

Mr. Rameshwar Singh for Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 1ST MARCH 2016.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith, by consent. Heard learned counsel for both the parties.

2. By this Writ Petition, Original Accused Nos.1 to 4 are challenging the process issued against them for the offence punishable under Section 420 r/w. 34 of IPC by the Court of Judicial Magistrate, First Class, Palghar in C.C. No.169/SW/2013. They had earlier challenged this order by preferring Criminal Revision Application No.22 of 2014 before the Additional Sessions Judge, Palghar. However, their Revision Application came to be dismissed by the Judgment and Order dated 26th August 2014.

3. Submission of learned counsel for the Petitioners is that the entire dispute involved in the present case is purely and simply of a civil nature. The allegations made in the complaint, even if taken at their face value, they do not constitute any of the ingredients of the offence of cheating. According to him, initially, even the Trial Court also, at the first blush, has observed that there is dispute regarding breach of contract. Subsequent thereto, the Trial Court has, after conducting inquiry under Section 202 of Cr.P.C., issued the process, but, as per learned counsel for the Petitioners, the complaint is conspicuously silent about dishonest intention of cheating on the part of the Petitioners-Accused since inception, which is the crux of Section 420 of IPC. He has further submitted that the

Petitioners had already made the payment of Rs.2,00,000/-. If the intention on the part of the Petitioners was to cheat since inception, the Petitioners would not have done so. By relying on various authorities of the Apex Court, the learned counsel for the Petitioners has submitted that, this tendency to convert the civil dispute into a criminal prosecution and thereby adopting the short-cuts to recover the amount is required to be curbed, as observed by the Apex Court. In the instant case also, therefore, according to him, the process issued against the Petitioners for the offence punishable under Section 420 r/w. 34 of IPC is required to be quashed and set aside.

4. Learned counsel for the Petitioners has further urged that the first claim towards the bill was made two years after the alleged bills and the complaint is also lodged after more than two years and it also, therefore, suffers from delay and laches. On this ground also, the process issued against the Petitioners needs to be quashed.

5. Per contra, learned counsel for Respondent No.2 has supported the impugned order of the Trial Court by inviting attention of this Court to various allegations made in the complaint, which spell out, according to him, the essential ingredients of the dishonest intention and cheating on the part of the Petitioners. Learned counsel for Respondent No.2 has further submitted that the Petitioners are even challenging and denying

the work done by Respondent No.2, which necessarily implies the dishonest intention on the part of the Petitioners. Hence, according to learned counsel for Respondent No.2, the Trial Court, after taking into consideration the allegations made in the complaint, finding prima facie case against the Petitioners, has issued the process and at this stage of threshold, no interference is warranted in the said order, especially, when it is also confirmed by the revisional Sessions Court.

6. In my considered opinion, in order to properly appreciate the rival submissions advanced by learned counsel for the Petitioners and Respondent No.2, it would be useful to refer to the allegations made in the complaint filed before the Trial Court. It is stated in the complaint that Respondent No.2 is the Proprietor of M/s. Crown Crane Services, engaged in the business of erection, servicing and maintenance of textile machinery, having office at Vasai (West). Petitioner No.1 herein is a Textile Company, situated at Plot No.E-26, M.I.D.C., Tarapur, Dist. Thane. Petitioner Nos.2 and 4 are the ex-Directors and Petitioner No.3 is the father of Petitioner Nos.2 and 4.

7. It was the case of Respondent No.2 that the Petitioners wanted his services for installation of textile machinery, fabrication and electrical work. As per the requirements of Petitioners, he agreed to do the work for total consideration of Rs.8,13,936/-. Petitioners had agreed to make

payment of the said work and, initially, even paid him Rs.50,000/- as advance in the month of February 2010 and subsequently the amount of Rs.1,50,000/- towards part payment of the work done by Respondent No.2. After completion of work, Respondent No.2 demanded balance amount of Rs.6,13,936/-. The Petitioners, however, started avoiding to make the payment on one count or the other and thus they cheated Respondent No.2 by avoiding the payment of the outstanding amount of Rs.6,13,936/-. Hence, after issuing the notices dated 30th November 2012 and 14th January 2013, Respondent No.2 approached the Trial Court for issuance of process against the Petitioners for the offence punishable under Section 420 r/w. 34 of IPC.

8. The Trial Court, initially, by its order dated 4th October 2013, observed that, *"it appears that there is dispute regarding breach of contract"*. However, as the Petitioners, who were accused in the complaint, were residing outside the territorial jurisdiction of the Trial Court, the Trial Court directed Tarapur Police Station to conduct inquiry under Section 202 of Cr.P.C.

9. Subsequently, on the receipt of the Report of the inquiry under Section 202 of Cr.P.C., the Trial Court observed that, *"it appears that the complainant had carried out all the work as per the direction of the accused, however, the accused have failed to make payment of the bills*

raised by the complainant and hence it appears that the accused had dishonest intention to deceive the complainant". With these observations, the Trial Court issued the process against the Petitioners under Section 420 r/w. 34 of IPC.

10. As per learned counsel for Respondent No.2, there are sufficient allegations in the complaint in para No.3 to the effect that, *"the accused falsely, with the deceiving intention, assured and made representation to the complainant that they would make the payment of the works, which would be done for their factory and at that time, complainant could not smell the deceiving intention of the accused. The complainant did the works of textile process machine, fabrication, electrical works and labour charges etc. and thereafter raised the bills, which are stated in the complaint and which are to the tune of Rs.8,13,936/-".* In para No.3, it is further alleged that, *"the accused has made the advance payment of Rs.50,000/- in the first week of February 2010 and Rs.1,50,000/- afterwards, in the beginning, with dishonest deceiving intention to win the confidence and to induce the complainant to get their work done. However, after he completed the work, the accused avoided to make the payment. Thus, the accused have, by making false representations, with the intention of cheating the complainant since beginning, made the initial payment and succeeded in their plan of cheating the complainant".*

However, when the notices were sent demanding the payment, the accused even challenged and denied that any such work was done by the complainant. Even it was questioned whether complainant was having the license to do the work. It was further alleged that false and bogus bills are raised by the complainant. Thus, according to learned counsel for Respondent No.2, there are sufficient averments in the complaint and, therefore, the process issued by the Trial Court against the Petitioners cannot be quashed.

11. As against it, as stated above, the submission of the learned counsel for the Petitioners is that, the claim raised by Respondent No.2 is delayed i.e. after a period of two years. If the work was completed in the year 2010 itself, as can be seen from the bills dated 30th June 2010 and 31st July 2010, there is no explanation as to why the first demand notice was sent after two years on 30th November 2012. Secondly, it is submitted that there appears to be at the most a breach of contract, a civil dispute; the proper remedy for Respondent No.2 was, therefore, to approach the Civil Court. He has tried to convert the civil dispute in criminal prosecution.

12. To substantiate his submission, learned counsel for the Petitioners has relied upon the two authorities of the Apex Court; one is that of ***Thermax Limited & Ors. Vs. K.M. Johny & Ors., 2011 (13) SCC 412***, wherein, after taking the review of its earlier decisions, the Apex Court, in

the facts of its particular case, on the basis of the averments in the complaint, held that, *“perusal of the complaint clearly shows that no such dishonest intention can be seen or even inferred, in as much as, the entire dispute pertains to contractual obligations between the parties. Since the very ingredients of Section 420 of IPC are not attracted, the prosecution initiated is wholly untenable. Even if we admit that the allegations made in the complaint do make out a dispute, still it ought to be considered that the same is merely a breach of contract and same cannot give rise to the criminal prosecution for cheating, unless fraudulent or dishonest intention is shown right from the beginning of the transaction”*. In the peculiar facts of the said case, it was held that, *“in as much as, there are number of documents to show that the Appellant Company had acted in terms of the agreement and in a bonafide manner. Hence, it cannot be said that the act of the Appellant Company amounts to a breach of contract”*.

13. Thus, considering the facts of the case and in the absence of averments in the complaint about the dishonest intention since inception, it was held that the ingredients of Section 420 of IPC were not attracted and the dispute was of a civil nature.

14. In the second authority relied upon by learned counsel for the Petitioners, that of ***Binod Kumar and Ors. Vs. State of Bihar & Anr., (2014) 10 SCC 663***, the Apex Court has again taken into consideration its

earlier decision in ***Indian Oil Corporation Vs. NEPC India Limited, (2006) 6 SCC 736***, and observed that, *“it is necessary to take notice of a growing tendency in business circles to covert purely civil disputes into the criminal cases. This is obviously on account of a prevalent impression that Civil Law remedies are time consuming and do not adequately protect the interest of lenders / creditors”*.

15. After taking into consideration the averments made in the complaint in that case, it was observed that *“even if all the allegations in the complaint are taken at their face value as true, in our view, the basic essential ingredients of dishonest, misappropriation and cheating are missing. Criminal proceedings are not a shortcut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 of IPC are missing, prosecution of appellants under Section 406/120-B of IPC was liable to be quashed”*.

16. Thus, it can be seen that in both these authorities, the Apex Court has, looking into the specific allegations or one may call the absence of allegations, spelling out the essential ingredients of the offence of cheating under Section 420 of IPC, has quashed the process observing that it was clearly a case of breach of contract and the ingredients of cheating are not attracted.

17. In the instant case, however, from the cursory perusal of the allegations made in the complaint filed before the Trial Court, which are quoted in extenso above, it can be seen that there are specific allegations made in the complaint that, since beginning, the Petitioners had the intention of deceiving and cheating and with that specific intention, in order to win the confidence and to induce Respondent No.2 to get their work done, they made initial advance payment of Rs.50,000/- and subsequently Rs.1,50,000/- and thereby got the work of Rs.8,13,936/- done from Respondent No.2. There are also allegations to the effect that accused made false representation with the common intention of deceiving, in the beginning, by making payments to the complainant and thus accused succeeded in their plan of cheating by inducing the complainant of giving assurance of making the payment and thus got their work done. Thus, accused cheated the complainant and the complainant suffered monetarily. Therefore, there are prima facie allegations made in the complaint itself spelling out the essential ingredients of the offence of cheating.

18. It is also pertinent to note that, in the reply sent to the notice of Respondent No.2 making the demand of the balance amount, the Petitioners have even challenged and denied the work done by Respondent No.2. They even disputed receipt of the bills and hence, by

subsequent notice, the copies of the bills were sent to them. They have then called those bills as bogus. They even questioned whether Respondent No.2 was having any license to do the other work, which he claims to have done. Therefore, from the averments made in the reply notices sent to the Petitioners by Respondent No.2, it can be said that it is not simplicitor a breach of contract as such and, therefore, a civil dispute, but some criminal element is definitely involved therein.

19. If on the basis of such material, if the Trial Court thought it fit, that too after carrying out the requisite inquiry under Section 202 of Cr.P.C., to issue process against the Petitioners, then it cannot be said that the Trial Court has committed any illegality, much less, perversity so as to warrant interference in the said order, which is already found to be correct and confirmed by the Revisional Court also.

20. When the Petition is filed under Section 482 of Cr.P.C. to quash the proceedings or the process issued against the accused at the stage of threshold itself, then the law expects that this Court should use its powers sparingly and with circumspection. It should exercise to see that the process of law is not biased or misused. The settled principle of law is that at the stage of quashing the complaint or F.I.R., the High Court is not to embark upon mini-trial or roving inquiry as to the probability, reliability or the genuineness of the allegations made in the complaint.

21. In the landmark decision of **Nagawwa Vs. Veeranna Shivalingappa Konjalgi, 1976 SCC (Cri) 507**, the Supreme Court has enumerated various eventualities where an order of the Magistrate issuing process against the accused can be quashed or set aside. Those eventualities are as follows :-

- (1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complainant does not disclose the essential ingredients of an offence which is alleged against the accused;*
- (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;*
- (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or no materials which are wholly irrelevant or inadmissible; and*
- (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.*

22. If the facts of the present case are considered, then it cannot be said that they are falling in any of the eventualities, as enumerated in the aforesaid decision.

23. At times, it happens that dispute may give rise, both, to civil remedy and criminal prosecution. Merely because the dispute involves the breach of contract and, therefore, a civil remedy is available, it does not bar the criminal remedy also, especially, when the allegations made in the complaint, if taken at their face value, spell out the essential ingredients of the offence.

24. Here in the facts of the case, allegations made in the complaint, prima facie, even if taken at their face value, make out the essential ingredients of deception and cheating, as alleged by Respondent No.2. Therefore, to quash the process at the initial stage itself and thereby depriving Respondent No.2 from proving his case on merits will amount to an abuse of the process. This case cannot be called as purely of a civil dispute as it involves the essential elements of criminal offence. Only when the dispute is of a purely civil nature, the remedy under the Criminal Law may be barred, as it may amount to abuse of the process of the Court.

25. Looking at the facts and material allegations contained in the complaint, this Court is not convinced that this is a case of purely civil dispute. Therefore, the process issued against the Petitioners cannot be quashed. The Writ Petition, therefore, deserves to be dismissed and, accordingly, stands dismissed. Rule is discharged.

26. At this stage, however, it is made clear that the observations made here-in-above as to the merits of the case are only for the purpose of deciding this Writ Petition and the Trial Court is not to be influenced or swayed by these observations.

[DR. SHALINI PHANSALKAR-JOSHI, J.]