

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4357 OF 2015

Mr. Haresh Mansukhlal Kabani

... Petitioner

vs.

The State of Maharashtra and ors.

... Respondents

Mr. Kishor Bhatia, Advocate for the petitioner.

Ms. Poonam Bhosale, Additional Public Prosecutor for the State.

Coram : Smt. R. P. SondurBaldota, J.

Date : 4th January, 2016.

P.C. :

1. This Writ Petition is directed against the order dated 17th July, 2015 by which the Sessions Court allowed Criminal Revision Application No. 638 of 2013 filed by respondents No.2 and

3. By the impugned order the Sessions Court has held that the order dated 4th April, 2014 of issuance of process by the learned Metropolitan Magistrate in C. C. No. 84/SW/2012 for the offences punishable under Section 420 r/w 34 I.P.C. was mechanical and without application of mind. The Sessions Court set aside the order of issuing of process and dismissed the complaint against the respondents No.2 and 3.

2. It appears that the petitioner had supplied certain

goods to respondents No.2 and 3 and there is dispute as regards payment of the price for the goods. The supply of the goods was during the period of 16th August, 2011 to 25th November, 2011. According to the petitioner, the total value of the goods was Rs.1,87,629. When respondents No.2 and 3 failed to pay the price of the goods, the petitioner, through his advocate had sent notice dated 20th March, 2012 alleging that the respondents were guilty of the offences punishable under Section 420 r/w 34 I.P.C. In their reply dated 19th April, 2012, respondents No.2 and 3 disputed the contention of the petitioner that respondents No.2 and 3 had dishonest intention right from the inception of not paying the amount of the price of the goods sold. Respondents No.2 and 3 denied that there was no dishonest intention on their part and alleged that the goods supplied by the petitioner were of substandard quality.

3. Mr. Bhatia, the learned advocate appearing for the petitioner submits that the very fact that respondents No.2 and 3 raised dispute as regards the quality of the supply in their affidavit-in-reply would indicate that they had dishonest intention right from the beginning of not paying the price of the goods sold and delivered to them.

4. The learned Sessions Judge by the impugned order has

rejected the claim of the petitioner for stating the following reasons.

“However, the said correspondence between the applicants and respondent no.1, prima facie, show that there were some valid reasons for the applicants to withhold the price of the material purchased by them from respondent No.1. If that be so, it cannot be said that the applicants had fraudulent or dishonest intention to not to pay the price of the goods to respondent no.1 and by making false representations induced respondent no.1 to part with the goods. Considering the facts of the case, it is prima facie clear that there is purely a civil dispute between the applicants and respondent no.1.”

The view taken by the learned Sessions Judge being a correct view there is no need to interfere with the same. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]