

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

1 CRIMINAL APPLICATION NO. 1515 OF 2017
WITH
CRIMINAL APPLICATION NO. 2062 OF 2017

VISHWAS DATTATRAY DIXIT
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Chawre Anand
APP for Respondent/State : Mr. R.V. Dasalkar
Advocates for assisting APP : Mr. N.S. Jaju & Mr. B.S. Tavrawala

...

CORAM : T.V. NALAWADE, J.
DATED : April 19, 2017.

ORDER :

1. The application is filed for relief of anticipatory bail in C.R. No.207/2016 registered in Jalna Tahsil Police Station for the offences punishable under sections 406, 420, 34 etc. of Indian Penal Code. Both the sides are heard. Papers of investigation were made available for perusal.

2. The crime is registered on the basis of report given by one Shantilal Tiwari, who is Manager of Rukmini Impex Pvt. Ltd. situated at Jalna. It is his contention that on 15.1.2016, Hi Tech Farms and Food Ltd., Pune contacted Rukmini Impex Pvt. Ltd. after coming to Jalna through owner Pradeep Walwekar and informed that it was ready to supply 500 tons of raw cashew nuts to Rukmini Impex Pvt. Ltd. As it is the business of Rukmini Impex Pvt.

Ltd. to process such material, it had agreed to purchase such quantity for consideration of Rs. 75,00,000/- (Rupees seventy five lakh). This amount was given in advance up to 24.2.2016. After that many time Rukmini Impex Pvt. Ltd. contacted the persons from Hi Tech Farms and Food Ltd., Pune and requested to send the aforesaid goods, but under one or other pretext, they avoided to send the goods. Ultimately, few persons from Rukmini Impex Pvt. Ltd. went to Pune to the company Office of Hi Tech Farms and Food Ltd. and there, according to complainant, Pradeep Walwekar and other partners like Sona Walwekar, Vishwas Dixit requested them to give 10 days time. This 10 days time was given. But, during that time also goods were not supplied and so, complaint application was given to police on 2.5.2016. After giving of the complaint, accused Walwekar requested not to take action and gave promise to return the amount of Rs. 75 lakh. Though such promise was given, subsequently, amount was not returned and quarrel was picked up and threats were given. Ultimately, on 17.5.2016, F.I.R. was given and the crime came to be registered.

3. The learned counsel for applicant submitted that it was a pure and simple contract under Indian Contract Act, there was no intention to deceive and so, no offence is made out. The learned counsel submitted that on 19.3.2016, the aforesaid

agreement of supply of goods was cancelled and promise was given to the complainant to return the money and such cheques were also issued. The learned counsel submitted that in view of these circumstances also, no criminal action can be taken against the applicant. Another ground is argued that on the date of the contract, i.e. on 15.1.2016, the present applicant was not Director of accused company and so, protection needs to be given. Some record is produced to show that the company from Ghana, West Indies had contacted Hi Tech Farms and Foods Ltd. and had given offer to sell 500 tones of raw cashew nuts. The learned counsel submitted that this circumstance shows that there was intention to supply the goods, but due to some unforeseen events, the contract could not materialised.

4. In the F.I.R., the complainant has not accepted that there was cancellation of agreement. During arguments when query was made, one learned counsel representing the complainant supplied information through APP that only after registration of crime, amount of Rs. 44 lakh was returned, but the remaining amount was not returned and there was intention to deceive right from beginning.

5. The learned counsel for the applicant took this Court

through the provision of section 415, illustration (g) of I.P.C. and submitted that as there was no intention to deceive, protection needs to be given. It is already observed that in view of the allegations made in the F.I.R., it cannot be said that there was no intention to deceive. Even if the record of Ghana Company is considered, it can be said that Ghana Company had given offer on 14.1.2016 to Hi Tech Farms and Food Ltd., but there is no record to show that Hi Tech Farms and Food Ltd. had accepted that offer and had sent the amount collected from the complainant to Ghana Company. As no amount was sent to Ghana Company and as there is no record to show that offer given by Ghana Company was accepted, the material as it is, is not sufficient to infer that there was no intention to deceive. Further, it needs to be kept in mind that the correspondence through E-mail and internet facilities has facilitated the transactions, but such transactions have also increased chances of fraud. There are instances in which the company or the persons from other stations come to this region, make promise, collect money and they do not fulfill their part of the agreement. Huge amount was collected from the complainant concern and there are aforesaid circumstances. When the present applicant has signed on the so called cancellation document, it can be said that he was aware of everything. This record also needs to be verified by the investigating agency as there is no reference of

this record in the F.I.R. In such a case, custodial interrogation is must.

6. The learned counsel for applicant placed reliance on the cases reported as **AIR 2000 SC 754 [G. Sagar Suri and Anr. Vs. State of U.P. and Ors.]**, **MANU/MH/1778/2016 [The Stock Exchange and ors. Vs. Yogesh Babulal Mehta and Ors.]** and **2016 ALL MR (Cri) 4476 [Technofab Engineering Ltd. and Ors. Vs. Bengal Mills Stores Supply Co. and Ors.]**. The facts and circumstances of each and every case are always different. It is necessary to ascertain as to whether there is some variance in the allegations made by the complainant and the record and as to whether there was the intention to deceive right from the beginning and that can be done through custodial interrogation. In view of the facts of the present matter, this Court holds that protection cannot be given to the applicant. The application is rejected.

7. The application filed for permission to assist the learned APP is allowed and disposed of. Learned counsel Shri.Jaju is allowed only to assist the learned APP.

[T.V. NALAWADE, J.]

ssc/