

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5757 OF 2016

1. Lovely d/o Ghanshyam Mutreja,
Age 31 years, Occu. Business
R/o A-1, Nalanda, 6, Mittal Enclave,
Sector-2, Naigaon (East),
Taluka Vasai, District Palghar
2. James s/o Pravin Mody,
(Described in the FIR as Raj Mody)
Age 37 years, Occu. Business,
R/o 404-A Wing, Ajanta, 12,
Mittal Enclave, Sector-2, Naigaon
(East), Taluka Vasai,
District Palghar

..Applicants

Versus

1. State of Maharashtra,
2. Sachin s/o Dwarkadas Chaturvedi,
Age 38 years, Occu.Business,
R/o C/o Dwarkadas Chaturvedi,
At Babhaleshwar, Shirdi road,
Taluka Rahata,
District Ahmednagar 413 737

..Respondents

Mr Joydeep Chatterji, Advocate for applicants
Mrs P.V. Diggikar, A.P.P. for respondent no.1
Mr S.D. Munde, Advocate for respondent no.2

**CORAM : S.S. SHINDE AND
A.M. DHAVAL, JJ.**

DATE : 13th September 2017

ORAL JUDGMENT (Per A.M. Dhavale, J.)

1. Rule. Rule returnable forthwith. With the consent of parties,
matter is taken up for final disposal at admission stage.

2. This is an application under Section 482 of Cr.P.C. for quashing of F.I.R. at C.R. No.I-187/2016, registered at Shrirampur Police Station under Sections 341, 323, 504, 506 read with Sec.34 of Indian Penal Code on 18.7.2016. The F.I.R. is lodged by respondent no.2 Sachin. The applicants are accused nos.3 and 4.

3. The facts relevant for deciding the present application may be stated as follows :

4. As per admitted facts, the informant Sachin and the applicant Lovely Mutreja were directors of a company Apollo Ingredients India Pvt. Ltd., situated at M.I.D.C. Shrirampur engaged in the business of manufacturing Ayurvedic medicines. The company was registered in the year 2010. Each were having 50% shares in the company.

5. In the F.I.R. it is alleged that on 18.7.2016 at 2.30 p.m., when the informant Sachin Chaturvedi came to the company, Security guard Machindra Waghchoure and Security Supervisor Mayur Shirke obstructed his way. That time, applicant no.1 Lovely (accused no.3) and applicant no.2 Raj Mody (accused no.4) abused him and told him that he was not concerned with the company and should not enter into the premises of company. He was threatened that If he would enter, his hands and legs would be cut off. Security guard and Security supervisor were instructed that the informant should not be permitted to enter the company premises. Accused nos.1 and 2 scuffled with and drove out the informant. The informant claimed that

though he was Director having 50% shares, he was obstructed from entering the company and thereby the accused have committed offences of wrongful restraint, intimidation and use of criminal force. On the basis of such F.I.R. dated 18.7.2016, crime was registered under Sections 341, 323, 504, 506 read with Sec.34 of Indian Penal Code.

6. The applicants pleaded and learned Advocate Mr Joydeep Chatterjee for the applicants argued for quashing of the F.I.R. on following grounds :

(I) By following the due procedure, respondent no.2 by resolution dated 15.7.2016 was removed from the Directorship in Extra-ordinary Meeting and, therefore, respondent no.2 has no right. Therefore, obstructing him would not amount to wrongful restraint, as he has no right to proceed inside the company.

(II) Respondent no.2 has indulged in severe financial wrong doings and illegalities. Therefore, after giving him reasonable opportunity and convening Extra-ordinary general meeting his name has been removed. The said decision has not been challenged by him. The Ministry of Corporate Affairs was accordingly informed about his removal. The F.I.R. is lodged to wreck vengeance against the applicants on account of action taken by them against respondent no.2. It is mala fide. The allegations if taken at the face value do not make out any case for registration of F.I.R.

(III) The applicant no.1 had earlier filed complaint on 17.6.2016 at Waliv Police Station, Naigaon, Vasai against respondent no.2 under Sections 403, 406, 420 read with 34 and 120-B of Indian Penal Code. Since the F.I.R. was not registered, report was submitted to the Superintendent of Police, Palghar on 5.8.2016, still there was no response. Hence, the complaint is filed before the Judicial Magistrate, First Class, Vasai seeking directions under Section 156(3) of Cr.P.C.

(IV) The remaining allegations are only in respect of Watchman and Security Supervisor with which the present applicants are not concerned. The ingredients of Section 323 read with Sec.34 of Indian Penal Code are also not disclosed against anybody. Hence, the F.I.R. deserves to be quashed.

8. Respondent no.2 has filed his affidavit in reply. He has opposed the application and denied the various stands raised by the applicants. He claimed that the F.I.R. discloses specific allegations disclosing the commission of various offences and the veracity thereof can be tested only at the time of trial. He claimed that he was founder Director of Apollo Ingredients India Pvt.Ltd. He was earlier Proprietor of Ocmum Herbals., situated at Pune and thereafter, the private limited company was formed on 7.12.2010 under the name and style as "Ocmum Healthcare Pvt. Ltd." He handed over his research of ten to twelve products to the company for manufacturing and selling the medicines. The name of the company was changed as "Apollo Ingredients Pvt.ltd.," He was one of the two whole time

Directors holding 50% shares in the company. It was applicant no.1, who indulged in illegal financial deals. Hence, respondent no.2 had issued instructions to the Auditor to return the blank cheques signed by him so that those should not be misused. The applicant no.1 made payments to his family members from the company's funds. Applicant no.1 got his brother and sister appointed as new Directors behind the back of respondent no.2. The Extra-ordinary general meeting dated 15.7.2016 was also held behind his back. He has challenged those minutes of Extra-ordinary general meeting before National Company Law Tribunal Mumbai. After appearance of parties, the Honourable Tribunal has granted interim relief to respondent no.2. Therefore, the F.I.R. discloses the commission of various offences shown therein.

9. We have heard learned Advocates for the parties and learned A.P.P. Mrs Diggikar for respondent no.1. We have gone through the various papers produced before us.

10. The respondent no.2 has produced documents to show that he was whole time Director of the company. The applicants have produced notice for calling Extra-ordinary general meeting dated 10.6.2016 and 12.6.2016 and notice dated 17.2.2016 to respondent no.2. Notice by applicant no.1 dated 6.7.2016 about the resolution to be passed on 15.7.2016. This decision was communicated to Ministry of Corporate Affairs on 15.7.2016. The applicants have also produced copy of complaint dated 17.6.2016 issued to Senior Police Inspector of Waliv Police Station.

11. It has not been disputed that respondent no.2 still holds almost 50% shares in the company. He has challenged the decision of his removal before the Company Law Tribunal, Mumbai. It is not disputed that there is interim order passed by the Company Law Tribunal on 14.9.2016 granting some interim reliefs to protect the interest of respondent no.2, as follows :

“a. The Respondent No.1 shall allow the inspection of Minutes books; Resolutions for the Calendar year 2015-2016 and the Books of accounts for the last two financial years ending on 31.03.2015 and 31.03.2016.

b. The Respondent No.1 shall not convene henceforth any such meeting or pass resolution which is detrimental to the interest of the Petitioner, however, the ordinary business of the Company shall not be affected by this interim directions.

c. Status quo as on date in respect of the shareholding and the position of the Directors shall be maintained.

d. The Respondent No.1 is hereby directed to place before this Bench the resolution passed in the EGM held on 12.09.2016 on or before 10.10.2016 and a copy to the Petitioner so that the legal repercussion, if any, can be adjudged.

e. The Petitioner shall be served with the notices of the meetings as per law to be held henceforth and the Petitioner is expected to attend such meetings in an amicable atmosphere.”

12. By virtue of 50% shares in the company and by virtue of interim relief granted by the Company Law Tribunal, we find that prima facie, the respondent no.2 has every right to enter the company premises and applicant no.1 had no right to instruct the Security Watchman and Security Supervisor to obstruct respondent no.2 from entering into the company premises. Since respondent no.2 herein has right to inspect the Minutes books, the resolutions and the books of accounts for the last two financial years and attend the meetings, his entry in the company premises cannot be said to be illegal. The impugned offence dated 18.7.2016 took place earlier to this order, but it is not disputed that the shares of respondent no.2 were not purchased by the applicants. We find that there is serious dispute about the rights of respondent no.2 with regard to Directorship of the company and the matter is subjudice before the Company Law Tribunal, Mumbai.

13. It is well settled that while exercising the powers under Section 482 of Cr.P.C., this Court should not enter into the disputed questions of facts. The facts indicate that the matter needs further investigation and only after investigation, the trial Court will be in proper position to appreciate the facts either at the stage of framing charge or at the time of trial. This is not a case where the ingredients of the offences alleged are not disclosed even on taking the facts stated in the F.I.R. at the face value. Similarly, this is not a case where the allegations made in the F.I.R. are inherently improbable. We, therefore, find that this is not a fit case for exercising the powers under Section 482 of

Cr.P.C. Hence, the application deserves to be rejected.

14. The application is already rejected on 13.9.2017 and we record herein our reasons for such rejection. Hence, the following order :

ORDER

Criminal Application stands rejected. Rule is discharged.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)

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