

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

CRIMINAL WRIT PETITION NO.468 OF 2014

Solaris People Solutions Pvt. Ltd. and ors. : Petitioners.
Versus
The State of Maharashtra and anr. : Respondents.

Mr. Saurabh Butala i/by Mr. Harshad Bhadbhade for the Petitioners.
Mrs. M M Deshmukh, Addl. PP for the Respondent/State.
Mr. V R Randive i/by Mr. Omprakash Dubey for the Respondent No.2.

**CORAM : R. M. SAVANT &
SANDEEP K. SHINDE, JJ.**
DATE : 19th September 2017

P.C.

1 The above Writ Petition has been filed for quashing of the FIR being CR No.308 of 2013 registered with the Bangur Nagar Police Station, Mumbai for the offences punishable under Sections 406 and 420 r/w 34 of the Indian Penal Code.

2 The Petitioners herein are engaged in the business of interior decoration. The Respondent No.2 herein is the first informant. An agreement dated 20/08/2013 was entered into between the Petitioners as Interior Decorator with the Respondent No.2 for carrying out the work of interior decoration of the flat of the Respondent No.2 being Flat No.2803, B Wing, Rustomjee Elenza, Malad, Mumbai. The said agreement inter-alia contains various covenants as regards interior designing, bill of

quantities/specifications, quality control & supervisions, list of drawings and also provides for arbitration if any dispute arises in connection with the work entrusted to the Petitioners. The statements of estimated cost of various works is annexed to the said agreement and the total estimated cost as mentioned in the grand summary is to the tune of Rs.33,64,975/- excluding VAT and service tax.

3 An FIR came to be lodged by the Respondent No.2 with the Bangur Nagar Police Station, Malad, Mumbai. The gravamen of the allegations against the Petitioners was that the Petitioners have carried out the work only to the extent and value of Rs.7,00,000/- whereas the Respondent No.2 has paid them an amount of Rs.41,00,000/-. The second allegation is that though an amount of Rs.12,00,000/- was paid to the Petitioners for purchasing the machinery, no such machinery has been purchased by the Petitioners and handed over to the Respondent No.2. The factum how the Respondent No.2 has raised the finance has been mentioned in the said FIR.

4 It is required to be noted at this stage that by order dated 09/06/2017 an interim order came to be passed by Division Bench of this Court permitting investigation to be carried on, but no charge sheet to be filed.

5 The learned Additional Public Prosecutor during the course of

hearing of the above Writ Petition, submitted that the charge sheet is ready to be filed but has not been filed in view of the fact that there is an interim order operating in favour of the Petitioners.

6 Heard the learned counsel for the parties. The learned counsel for the Petitioners Shri Saurabh Butala would submit that considering the allegations made in the FIR, they can hardly said to constitute the offences under Sections 406 and 420 of the Indian Penal Code. The learned counsel for the Petitioners would submit that even taking the FIR as its face value, no criminal culpability arises on the part the Petitioners. The learned counsel for the Petitioners would submit that even going by the case of the Respondent No.2 that an amount of Rs.41,00,000/- has been paid to the Petitioners, it is submitted by the learned counsel, that the estimated cost itself projects the amount as Rs.33,64,975/- and with VAT and service tax the amount comes to Rs.39,40,000/- and as per the FIR an amount of Rs.1,75,000/- has already been returned to the Respondent No.2. The learned counsel for the Petitioner would draw our attention to the FIR and especially to the statements recorded therein that the Respondent No.2 consulted with the Interior Decorator who had earlier carried out the interior decoration for him, which Interior Decorator has informed him that the work carried out by the Petitioners was only to the tune of Rs.7,00,000/-. The learned counsel for the Petitioners would therefore contend that the dispute if at all is a civil dispute and

therefore having regard to to the settled position in law, intervention of this Court under Section 482 of the Criminal Procedure Code is warranted for quashing of the FIR.

7 Per contra, the learned counsel appearing for the Respondent No.2 Shri Randive would submit that the allegations are two fold, one in respect of the interior decoration and second is in respect of the amount advanced towards the purchase of machinery i.e. the sum of Rs.12,00,000/-. The learned counsel for the Respondent No.2 would submit that the amount of Rs.41,00,000/- has been paid by the Respondent No.2 whereas the work carried out is only of the value of Rs.7,00,000/- and the machinery which the Petitioners were to purchase and hand over to the Respondent No.2 has not been done so. The learned counsel would therefore submit that interference of this Court is not warranted.

8 Having heard the learned counsel for the parties, we have considered the rival contentions. At this stage it would be apposite to refer to the judgment of the Apex Court in State of Haryana and others v/s Bhajan Lal and others reported in AIR 1992 SC 604. Paragraph 108 of the said Report is material and is reproduced herein under :-

“108 In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of

the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :-

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or

where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Hence by way of an illustration the Apex Court in paragraph 108 has laid down the tests which Courts have to apply before venturing to exercise the powers under Section 482 of the Criminal Procedure Code. It is in the background of the aforesaid tests and especially Clauses (1) and (2) thereof that the facts of the instant case would have to be revisited.

9 As indicated above, there is a written contract between the Petitioners and the Respondent No.2 which is dated 20/08/2013. The said written contract comprises within itself various aspects of the work relating to the interior decoration which was to be carried out by the Petitioners. In the context of the reliefs sought in the present Petition, it is required to be noted that the said agreement also provides for arbitration if any dispute arises between the parties as regards the work being carried out. The agreement contains a detail statement item-wise of the estimated cost of each item whilst carrying out the work of interior decoration. The summary of the said statement at the end of the agreement mentions the figure of Rs.33,64,975/-

excluding VAT and service tax. The said amount with addition of VAT and service tax comes to Rs.39,40,000/-. It is mentioned in the said FIR that the amount of Rs.1,75,000/- has been returned by the Petitioners to the Respondent No.2. Hence the amount of Rs.41,00,000/- can be said to have been accounted for.

10 Now coming to the FIR. The said FIR can be said to have been founded on the information or assessment made by the Interior Decorator who had already been engaged by the Respondent No.2 to carry out the work of interior decoration. According to the said Interior Decorator the work carried out by the Petitioners was to the extent and value of Rs.7,00,000/-. This is the foundation for the Petitioners approaching the Police and lodging the FIR. In so far as the machinery is concerned, there is no mention of the same in the agreement and the FIR is also blissfully vague as regards the nature of the machinery. Hence the facts as disclosed in the FIR exemplify a civil dispute between the parties.

11 The question that begs an answer is whether on the facts as appearing in the FIR, the criminal culpability of the Petitioners is made out. The answer has to be obviously in the negative. The ingredients of Sections 406 and 420 can hardly be said to have been satisfied in the instant case. Hence applying the tests laid down by the Apex Court in *Bhajan Lal's* case

(supra), in our view, the filing of the FIR is an abuse of the process of Court and appears to be an arm twisting tactic adopted by the Respondent No.2.

12 In that view of the matter, the above Writ Petition would have to be allowed and is accordingly allowed in terms of prayer clause (B). However, it is clarified that the instant order would not come in the way of the Respondent No.2 from prosecuting any civil proceedings or adopting any civil proceedings. The above Writ Petition is accordingly disposed of.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]