IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.961 OF 2003

1. Ramlal Bagai,
2. Anoop Ramlal Bagai, office at
Bagai Golden Transport Company,
AE-4/6, Sitaram Building, Market Road,
Crafford Market, Mumbai-400 001. Petitioners

versus

State of Maharashtra and others Respondents

Mr.S.P.Kanuga i/by H.P.Vyas for Petitioner.
None present for Respondent no.2.
Mr.Y.M.Nakhwa, APP, for State.

CORAM : PRAKASH D. NAIK, J.
DATE : 7th September 2017

PC :

1. The petitioners have challenged the criminal proceedings initiated by respondent no.2 by filing a criminal complaint against the petitioner and others in the Court of learned Chief Judicial Magistrate, Thane. The complaint was registered as Criminal Case No.417 of 2002. The petitioners were impleaded as accused no.3 and 4 respectively. The complaint was filed invoking the offences punishable under Section 403, 406, 407, 418, 420, 465, 468, 471, 201 read with Section 34 of Indian Penal Code. The learned Chief Judicial Magistrate issued process.

2. The case of the complaint in brief is as follows :-

(a) The accused no.1 was appointed as distributor of the complainant for the areas and on the terms and conditions mentioned in the letter-cum-agreement dated 1st April 1997. By subsequent letter-cum-agreement dated 20th March 1999, the accused no.1 was re-appointed as distributor of the complainant with effect from 1st April 1999 for the areas and on the terms and conditions mentioned therein, whereby the earlier appointment was superseded by the subsequent agreement;

(b) The complainant opened their Aurangabad Division and started manufacturing the product namely Tortoise brand mosquito coils product therefrom which is called as Drive Industry of the complainant. The accused no.1 was appointed as the in-charge of the Drive Industry at Aurangabad w.e.f. September-1999 on the terms and conditions agreed between both the parties. The accused no.1 further appointed accused no.2 as Manager-cum-Accountant to manage the affairs of the said Drive Industry for and on behalf of accused no.1. The accused nos.1 and 2 were in-charge and in control of the Drive Industry of the complainant at Aurangabad and were entrusted with the duties to be discharged for and on behalf of the complainant including receiving stock, arranging transport, receiving orders and supplying the said products to various customers, maintaining all the records etc.. The earlier appointment of the accused no.1 was distributor for which the accused no.1 had opened a proprietary concern in the name and style as M/s.Saptashring Udyog was also acting for the purpose of his duties as agent of the complainant for the said Drive Industry of the complainant at Aurangabad and the same were subject to the terms and conditions agreed between both the parties. The accused nos. 1 and 2 were over all in-charge and were in control of the said Drive Industry of the complainant at Aurangabad and had agreed to render all accounts to the complainant from time to time;

(c) It is further alleged that accused nos.3 and 4 were partners of M/s.Bagai Golden Transport Company and were working for the complainant as a transporter of the said product from their Drive Industry at Aurangabad to various destinations in the area allotted to accused nos.1 and 2. Although accused nos.3 and 4 were directed to work at the instructions of accused nos.1 and 2, they were entitled to receive their transport charges directly from the complainant. The accused no.5 was working as a driver on the motor lorries of accused nos.3 and 4 used by them for delivery of the said products from the Drive Industry at Aurangabad to various destinations as directed by accused nos.1 and 2;

(d) The accused nos.1 and 2 forwarded the monthly stock statement for the month of January, February and March-2000 to the complainant showing the stock of 4,301 cases of the said products. In the statement for the month of April-2000 forwarded by accused nos.1 and 2, the said stock was not shown and the columns were left blank. Upon inquiries by the complainant, the accused no.1 admitted that the said stock is already taken by him and was transported to Ozhar, District Nashik and therefore it may be shown on his account. Accordingly at his request, the bills for the said stock along with other 299 cases were prepared bearing No.358 to 379, dated 31st March 2000 in the name of accused no.1. Accordingly the accused nos.1 and 2 were liable to pay an amount of Rs.29,83,629/-

being the aggregate amount of the said bills. The accused thereafter did not make the payment although several requests and demands were made by the complainant. The accused paid an amount of Rs.1.00 lakh against bill no.358 as part payment and against bill no.359 as part payment. The said payment of Rs.2.00 lakh was duly acknowledged by the complainant, however, accused no.1 thereafter did not make the payment of the remaining unpaid bills to the complainant. The complainant therefore,wrote letter dated 21st July 2001 calling upon the accused no.1 to make the balance payment of the outstanding bills as on 31st March 2001. However, the accused no.1 vide letter dated 27th July 2001 disowned the said bills and contended that he has credited all the bills raised on him till 31st March 2001;

(e) The complainant thereafter faxed a letter to accused nos.3 and 4 on 27th August 2001 requiring them to acknowledgee the copies of the GRs mentioned therein and calling upon them to give the details of the stock having been transported to Ozhar, District Nashik as was admitted and reported by accused no.1 earlier. The accused nos.3 and 4 in turn referred the said fax letter to accused nos.1 and 2 whereupon the accused no.2 at the foot thereof confirmed that they have gone through their records and further confirmed that they had duly received the said consignment at Ozhar, District Nashik. The said confirmation of accused no.2 appears in writing at the foot of the said letter dated 27th August 2001 and has been duly signed by accused no.2 with stamp affixed below his signature. The accused nos.1 and 2 have therefore taken contradictory stands about the receipt of the stock;

(f) It is further alleged that the complainant demanded the copies of lorry receipts and delivery challans from the accused nos.3 and 4. However, the accused nos.3 and 4 informed the complainant that although initially there were instructions from the accused nos.1 and 2 to transport the said stock to Ozhar, District Nashik, at the instance of the said accused, the same were transported to various other destinations i.e. Jalgaon, Indore, Bhivandi, Thane, Mumbai etc. instead of Ozhar, District Nashik. The accused nos.3 and 4 also supplied the true copies of certain lorry receipts and delivery challans whereby it was revealed that the stock was illegally transported to various other destinations. The accused had conspired with each other and in the circumstances with a dishonest intention misappropriated the stock of the complainant and/or have sold the same and misappropriated the value thereof to the tune of Rs.27,83,629/-. The accused no.3 had supplied the xerox copies of certain lorry receipts and delivery challans and on carefully examining them it was noticed that the same were not genuine. There were alterations on the lorry receipts on which the destination Ozhar was scored off and new destinations like Jalgaon, Indore, Bhivandi and Thane were written. The accused nos.3 and 4 had accepted the transport charges for reaching the said stock to Ozhar as per the goods receipt numbers mentioned in the lorry receipts. The accused no.3 in the circumstances, there is reason to believe that the delivery challans and the lorry receipts were forged by accused nos.1 and 2 in collusion with the accused nos.3 to 5. It was therefore, alleged that all the accused had acted in connivance with each other and have caused loss to the complainant.

3. Heard learned advocate Shri Kanuga for the petitioners and learned APP for the State. The learned counsel for the petitioners submitted that the complaint itself shows that the respondent no.3 (accused no.1) was the distributor in respect to the goods which are subject matter of the complaint and the complainant had raised the invoice of Rs.29,83,629/- against him. It is further submitted that in the complaint itself it is admitted that the accused no.1 had made a part payment in respect to the goods which are subject matter of the complaint. The complainant has also stated that the accused no.1 had accepted that the goods were delivered at his instance and that the invoices were raised against the accused no.1 to make the payment. It is also stated in the complaint that the accused no.1 had accepted the liability and thereafter made a part payment, however, subsequently he denied the claims of the complainant. The accused no.1 was acting as a distributor of the complainant as stated by the complainant and thereby the previty of contract was between the complainant and accused no.1 who had initially accepted the liability. Once the accused no.1 had accepted the liability, it was for the complainant to recover the dues from the accused no.1 and there was no question of alleging commission of any offences at the instance of the other accused i.e. the petitioners in the said complaint. It is further submitted that the dispute is purely of a civil nature and the proceedings for criminal prosecution ought not to have initiated by the complainant. It is submitted that the learned Magistrate had mechanically issued the process in the complaint which refers to the dispute which is purely arising out of commercial transaction and which is in the nature of a civil dispute. The learned counsel for the petitioner also relied upon the compilation of documents to support his submission that the previty of contract was

between the complainant and the accused no.1. The learned counsel pointed out the letter dated 21st July 2001 written by the complainant to the accused no.1. In the said letter it was stated that the said accused shall confirm the outstanding balance as on 31st March 2001 which is as per the record is Rs.35,04,762/- standing in his account and receivable from him. The bill wise statement of outstanding payment as on 31st March 2001 was also enclosed with the said letter. On the basis of the said documents, it is submitted that the claim of outstanding was against the accused no.1 and the petitioners have no concern with the same. The allegation that the petitioners have acted in connivance with the accused no.1 has no basis and there is no material in that regard. The allegation of forgery of documents is also devoid of any merits and the same is not corroborated by any evidence. He further pointed out the letter dated 1st October 2001 forwarded at the instance of M/s.Bagai Golden Transport Company to the complainant wherein the original acknowledged copy of the list of consignments delivered to M/s.Saptashring Udyog, Ozhar on various dates was enclosed. In pursuant to that, the letter dated 30th April 2002 was forwarded by the complainant wherein it was stated that the complainant had received the copies of the motor lorry receipts and thanked M/s.Bagai Golden Transport Company for forwarding the said documents. The firm was called upon to preserve the original office copies of the motor lorry receipts, as stated above. The firm was directed to preserve and keep in safe custody the said original records and produce the same as and when called for by the complainant. The said letter was replied by Bagai Golden Transport Company, the firm of the petitioners, on 14th June 2002 wherein it was mentioned that the petitioners have been transporting the consignments from Bombay and Aurangabad over the last many years. Whenever goods have been booked by the complainant from Aurangabad to Ozhar to their agent Mr.A.R.Kasture of M/s.Saptashring Udyog, the same had been delivered at destinations as per their advise. Delivery acknowledgements duly signed by the consignee at Ozhar were sent to them by letter dated 1st October 2001. It was further stated that motor lorry receipts of respective consignments were given to their representative at the time of booking at Aurangabad and as a result preserving the motor lorry receipts, does not arise. It was also stated that any misappropriation by their agent as stated by them is without the knowledge, responsibility and liability and that the petitioners are not party to the said dispute. The learned counsel therefore, submitted that the proceedings initiated against the petitioners may be quashed and set aside.

4. Learned APP supported the complaint and submitted that the petition may be dismissed. It is submitted that the learned Magistrate has issued the process after going through the averments in the complaint and the order of process may not be set aside on the basis of the contentions of the petitioners.

5. I have perused the documents on record. I have gone through the contents of the complaint filed by the respondent no.2 and the documents relied upon by the petitioner in support of his contentions. The complainant in the complaint had stated that the accused nos.1 and 2 were in-charge and were in control of the unit of the complainant at Aurangabad which was named as Drive Industry. It is also noted that the accused no.1 was appointed as

distributor at the earlier point of time for which the accused no.1 had opened a proprietary concern in the name and style as M/s.Saptashring Udyog which was also acting for the purpose of his duties as agent of the complainant for the said Drive Industry of the complainant at Aurangabad. It is further stated that the accused nos.1 and 2 were in over all control of the Drive Industry of the complainant at Aurangabad and agreed to render all accounts to the complainant at their Mumbai office from time to time. The accused no.1 was appointed as agent of the complainant to be in-charge of the said Drive Industry of Aurangabad w.e.f. September-1999 on the terms and conditions agreed between the complainant and accused no.1. The accused no.1 appointed the accused no.2 as manager-cum-accountant to manage the affairs of the said Drive Industry for and on behalf of the accused no.1 and as such the accused no.2 also at all relevant time started dealing with the complainant for and on behalf of the accused no.1. It is further mentioned in the complaint that the accused nos.1 and 2 were in-charge of and in control of the said Drive Industry of the complainant at Aurangabad and were inter alia entrusted with the duties to be discharged for and on behalf of the complainant including receipt of stock arranging transport, receiving orders and supplying the said product to various customers maintaining all the records etc.. From the aforesaid factual aspects reflected in the complaint, it is clear that the accused no.1 and 2 were acting as in-charge and were in control in respect to the Drive Industry at Aurangabad. They were also entitled to receive the orders and transport the product to various customers etc. It is further mentioned that the petitioners who are the partners of M/s.Bagai Golden Transport Company were working for the complainant as a transporter of the said product from their Drive

Industry at Aurangabad to various destinations in the area allotted to accused nos.1 and 2. It also appears from the complaint that the accused nos.3 and 4 (petitioners) were directed to work at the instructions of accused nos.1 and 2. Thus, from the complaint itself it is clear that the petitioners were the transporters and were acting at the instructions of accused nos.1 and 2 for transporting the products to various destinations. From the averments in the complaint itself, it is apparent that the accused no.1 had admitted that the stock of 4301 cases of the products was already taken by him and was transported to Ozhar, District Nashik and therefore it may be shown in his account, and hence at his request the bills for the said stock of 4,301 cases along with other 299 cases were prepared bearing No.358 to 379, all dated 31st March 2000 in the name of accused no.1. Hence, the accused were liable to pay an amount of Rs.29,83,629/- being the aggregate amount of the said bills. It is further stated that the accused no.1 made a payment of Rs.1 lakh each against bill no.358 as a part payment and again bill no.359 as a part payment. Thus, the accused no.1 had made payment of Rs.2 lakh which was acknowledged by the complainant. Thus, the accused no.1 had accepted the liability in respect to the said goods and had also made the part payment. Merely on the ground that subsequently the accused no.1 had disowned the said claim, the prosecution cannot be launched on the basis of inferences and surmises against the petitioners. From the complaint it is also reflected that the complainant had forwarded a letter to the petitioners on 27th August 2001 requiring them to acknowledge the copies of GRs mentioned therein and calling upon them to give the details of the stock having been transported to Ozhar, District Nashik as was admitted and reported by the accused no.1 earlier. The accused nos.3 and 4 (petitioners) referred the said fax letter to accused nos.1 and 2 whereupon the accused no.2 at the foot thereof confirmed that they have gone through their records and further confirmed that they have duly received said consignment at Ozhar, District Nashik. The said confirmation of accused no.2 appears in writing at the foot of the said letter dated 27th August 2001 and has been duly signed by accused no.2 with stamp affixed below his signature. The said letter was written to the complainant by the petitioners. In the light of the acceptance of the liability at the instance of accused no.2, there was no case of any claims or case for making any allegations of forgery or acting in connivance with accused no.2 by the petitioner is being made out by the complainant. The bald statements made in the complaint are not sufficient to invoke the prosecution against the petitioners. It is pertinent to note that the averments in the complaint itself categorically states that the accused nos.1 and 2 had accepted the goods and had also accepted the liability and had subsequently disowned the said liability. Merely on the ground of denial on the part of accused no.2 the petitioners cannot be held responsible and being prosecuted by launching criminal prosecution against them. The petitioners had co-operated with the complainant which is evident from the correspondence referred to hereinabove and has tendered an explanation to the letter received from the complainant. From the summons annexed to the petition it appears that the process was issued for the offences under Sections 403, 406, 407, 408 and 420 of Indian Penal Code and no process was issued for offence relating to forgery. The dispute basically appears to be relating to the matter of accounts and of commercial in nature. In any case, no case is made out for initiating any prosecution against the petitioners.

6. Hence, I pass following order :

ORDER

(i) Rule is made absolute;

(ii) Criminal Writ Petition No.961 of 2003 is allowed;

(iii) The proceedings in Criminal Case No.417 of 2002 filed before the Court of chief Judicial Magistrate, Thane along with the order issuing process therein, are hereby quashed and set aside;

(iv) Writ petition is disposed off.

(PRAKASH D. NAIK, J.)

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