IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 676 OF 2017
WITH
CRIMINAL WRIT PETITION NO. 873 OF 2017
WITH
CRIMINAL WRIT PETITION NO. 874 OF 2017
WITH
CRIMINAL WRIT PETITION NO. 875 OF 2017
WITH
CRIMINAL WRIT PETITION NO. 876 OF 2017
WITH
CRIMINAL WRIT PETITION NO. 877 OF 2017
WITH
CRIMINAL WRIT PETITION NO. 878 OF 2017
WITH
CRIMINAL WRIT PETITION NO. 879 OF 2017

Sheth Developers Pvt. Ltd. & Ors. …. Petitioners

Versus

State of Maharashtra & Anr. …. Respondents

Ms. Pravina A. Thakker-Kanani for Petitioners in all Petitions.
Mr. G.R.Sharma a/w Mr. D.P.Singh a/w Mr. Anil Singh for Respondent No.2 in all Petitions.
Mr. S.R.Agarkar, APP for Respondent No.1/State in W.P.No.676/17.
Ms. Pallavi Dabholkar, APP for Respondent/State in W.P.No.873/17 to 879/17.

CORAM : RAVINDRA V. GHUGE, J.
DATE : MARCH 20, 2017.

P.C.

1. The Petitioners and Respondent No. 2 are the Accused in the original Complaint before the trial court. In all these identical

matters, the Petitioners are challenging the orders of issuance of process by the trial court and the judgment of the Revisional Court thereby dismissing the Revision Petitions filed by the Petitioners.

2. With the consent of the learned Advocates of the respective sides, I have taken up these matters together, since the facts are identical, the parties are the same and the impugned orders are equally identical.

3. I have heard the learned Advocates at length.

4. A work order was signed by the Petitioners with Respondent No.2 which is a Construction Company, on 2nd May 2008. The terms of the work order were that Respondent No.2 would construct three structures and the Petitioners would pay the second Respondent amounts as are agreed upon.

5. The project consisted of two residential structures and a commercial shopping premises which were named as - (i) Viviana Mall, (ii) Vasant Fiona and (iii) Vasant Lawns. These major structures were to be erected by Respondent No.2 and the Petitioners were to carry out inspection of the structures at different levels and accordingly make the payments to Respondent No.2.

6. Eight post dated cheques were issued by the Petitioners to Respondent No.2. There is no dispute that these cheques were dishonoured and for which Respondent No.2 has initiated separate proceedings under Section 138 of the Negotiable Instruments Act.

7. It is stated that Respondent No.2 was a Company which was indulging in the business of Engineering, Designing and Construction activities. The Petitioner – Company which claimed to be facing a financial crisis, had therefore put the burden on Respondent No.2 to raise funds through its Bankers so that the construction of the three major structures would not be halted. Respondent No.2 accordingly is said to have trusted the Petitioners and had got the said amounts generated through loans so as to support the construction activity. It was on account of these circumstances that the said cheques were issued by the Petitioners to Respondent No.2.

8. The Petitioners have vehemently contended two aspects. Firstly, that the eight cheques that have been dishonoured, were issued only as collateral security and were not aimed at making a payment to Respondent No.2 through the said instruments. Secondly, the complaints filed by Respondent No.2 before the trial court invoking Sections 406, 420 and 120-B of the Indian Penal Code cannot be invoked and especially, the ingredients of the complaint would not attract Section 120-B of the Indian Penal Code. So also, Respondent No.2 has filed independent proceedings under Sections 138 and 142 of the Negotiable Instruments Act.

9. There is no dispute that after Respondent No.2 initiated these proceedings against the Petitioners, the Petitioners have also filed a complaint dated 7th August, 2013 with the Bandra Kurla Complex Police Station invoking Sections 405, 406, 409, 415, 417,

418 and 420 of the Indian Penal Code. In short, both these litigating sides have initiated criminal proceedings against each other.

10. The case of the Petitioners is that these eight cheques which were post dated cheques and were handed over to Respondent No.2 for collateral purpose, have been misused and have been fraudulently presented for encashment. It is the case of Respondent No.2 that the firm was induced into trusting the words of the Petitioners. Respondent No.2 shouldered the burden of erecting the construction from its own funds which they have generated through loans at high interest rates. After the cheques were dishonoured, the Petitioners are now taking a false plea that the cheques were issued only for collateral purpose.

11. The document dated 10th February, 2012 signed between the Petitioners and Respondent No.2 which the Petitioners have not placed on record, is tendered by Respondent no.2 and a copy is handed over to the Petitioners. The said document is marked as “X” for identification and is taken on record.

12. The document “X” indicates the minutes of the meeting that took place between the Petitioners and Respondent No.2 on 7th February, 2012 and this was followed by a letter issued by the Petitioners. By considering their long standing relationship and the support extended by Respondent No.2, the Petitioners agreed that ten post dated cheques would be handed over to the second Respondent. Specific amounts of Rs.1,50,00,000/-, 1,00,00,000/-

and 1,50,00,000/- were mentioned in the said 10 instruments which were all dated the 15th day of the months of April to November 2012. The Petitioners therefore agreed to pay an amount of Rs. 12,00,00,000/- to Respondent No.2. The Revisional Court has specifically noted in its order that two cheques were honoured and the remaining 8 cheques were dishonoured. This therefore clearly indicates that the Petitioners have not made a truthful statement before this Court by attempting to convince the Court that these eight cheques were issued for collateral purpose. The document “X” therefore reveals the true picture and it appears that the Petitioners purposefully kept the said document away from this Court by not placing it on record in all these petitions.

13. The contention of the Petitioners is that as the ingredients of Section 420 of the Indian Penal Code are not found in the complaint filed by Respondent No.2, the process issued needs to be quashed. I find that the said contention is without any merit. It appears prima facie that Respondent No.2 agreed to proceed with the construction of the three structures at issue on its own cost by arranging working capital from the banks, financiers etc. because the Petitioners had specifically assured Respondent No.2 that its money would be repaid. As an indication of the intention to repay the said amount, the ten cheques of a total sum of Rs. 12,00,00,000/- were issued by the Petitioners. In this backdrop, by not making the said payments and the peculiar facts as recorded above, it does appear that Respondent No.2 was made to believe that it should invest its

own money in these structures and the Petitioners would ensure payment of all amounts.

14. It appears that after Respondent No.2 felt cheated, it then stopped the further construction and the Petitioners have got the remainder of the construction executed from another contractor and these structures have been put to commercial use.

15. The Petitioners have relied upon the judgment of the Hon'ble Supreme Court in the matter of ***G. Sagar Suri and another V/s State of U.P. & Ors. 2000 Bom.C.R.(Cri.) 694***, wherein the Hon'ble Apex Court has observed in paragraph Nos.11, 12 and 14 as under :

> *"**11**. In Chandrapal Singh vs. Maharaja Singh, AIR 1982 SC 1238, the judgment started as under (Para 1) :*
> *A frustrated landlord after having met his wateloo in the hierarchy of Civil Courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous.*
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> *This Court said (para 14) :*
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> *We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal Court. Complainant herein is an Advocate. He lost in both Courts in the rent control proceedings and has now rushed to the criminal Court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975.*

The conclusion is inescapable that invoking the jurisdiction of the criminal Court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482 Cr.P.C.

***12**. This Court said that the Chief Judicial Magistrate, Secunderabad ought not to have taken cognizance of the proceedings. It said it considered it to be a fit case to invoke jurisdiction under Section 482 of the Code.*

***14.** We agree with the submission of the appellants that the whole attempt of the complainant is evidently to rope in all the members of the family particularly who are the parents of the Managing Director of Ganga Automobiles Ltd. In the instant criminal case without regard to their role or participation in the alleged offences with a sole purpose of getting the loan due to the Finance Company by browbeating and tyrannizing the appellants of criminal prosecution. A criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420, I.P.C. and in his doing so it is clearly and abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do."*

16. It is evident from the facts of the *G. Sagar case (supra)* that all the family members of the Managing Director were made accused in the proceedings and the Hon'ble Apex Court concluded that this was with the sole purpose of browbeating and tyrannizing the Accused. In this backdrop, it was concluded that no ingredients of Section 420 were found in the allegations made by the complainant.

17. In ***Vinod Raghuvanshi V/s Ajay Arora and Others, (2013) 10 SCC 581,*** the Hon'ble Apex Court has held in paragraph Nos. 26, 27 and 30 as under :

> *"**26**. Thus, it is evident that for taking cognizance or issuing process in a complaint case the court must have merely a prima facie satisfaction that there is some material on record to proceed against the accused. In the instant case, the CJM, Bhopal issued process after being fully satisfied that some material was available on record to proceed against the appellant and others.*
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> ***27.*** *In Kishan Singh v. Gurpal Singh this Court held : (SCC p.782, para 22)*
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> *"22. In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay.In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case."*
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> *__30__. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a stillborn child",*

> *and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 Cr.P.C. So, the order passed even by the High Court or this Court is subject to the order which would be passed by the trial court at a later stage."*

18. Similarly, in the matter of ***Bhushan Kumar and Another V/s State (NCT of Delhi) and Another, (2012) 5 SCC 424***, the Hon'ble Apex Court has observed in paragraph Nos. 16, 17, 18 and 19 as under :

> *"**16.** In Nagawwa v. Veeranna Shivalingappa Konjalgi this Court held that it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. It was further held that in deciding whether a process should be issued, the Magistrate can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. It was further held that : (SCC p. 741, para 5)*

“5. ……Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused.”

17. *In Chief Controller of Imports & Exports v. Roshanlal Agarwal this Curt, in para 9, held as under : (SCC pp.145-46)*

“9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in U.P.Pollution Control Board v. Mohan Meakins Ltd. And after noticing the law laid down in Kanti Bhadra Shah v. State of W.B. it was held as follows : (U.P. Pollution case, SCC p. 749, para 6)

“6. The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to the accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.”

18. *In U.P.Pollution Control Board v. Bhupendra Kumar Modi this Court, in para 23, held as under : (SCC p.154)*

“23. It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused.”

> ***19.*** *This being the settled legal position, the order passed by the Magistrate could not be faulted with only on the ground that the summoning order was not a reasoned order."*

19. In the matter of ***Sangeetaben Mahendrabhai Patel V/s State of Gujarat and Another, (2012) 7 SCC 621***, the Hon'ble Apex Court has observed in paragraph Nos. 37, 38 and 39 as under :

> *"**37.** Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 of the NI Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution under Section 138 of the NI Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under Section 420 IPC is a serious one as the sentence of 7 years can be imposed.*
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> ***38.*** *In the case under the NI Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque. Such a requirement is not there in the offences under IPC. In the case under the NI Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under IPC. The case under the NI Act can only be initiated by filing a complaint. However, in a case under IPC such a condition is not necessary.*
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> ***39.*** *There may be some overlapping of facts in both the cases but the ingredients of the offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions."*

20. It is quite obvious from the impugned orders that the trial court as well as the Revisional Court have considered the material before it, have applied their minds to the facets of the case and have prima facie concluded that there is material available which would require the initiation of a trial against the Petitioners. In the matter of ***M/s. Indian Oil Corporation V/s M/s. NEPC India Ltd., & Ors. AIR 2006 SC 2780*** and in the matter of ***M/s. Opts Marketting Pvt. Ltd. & Ors. V/s The State of Andhra Pradesh dated 25th January 2001 in Criminal Petition No. 556 of 1999***, the Hon'ble Apex Court has held that, if the dispute has elements of a civil dispute as well as of a criminal nature, criminal cases can be initiated.

21. Prima facie from the facts available before the Court, it appears that Respondent No.2 was made to believe that his investments in the construction work would be repaid by the Petitioners at regular intervals. From the language of document "X, it is apparent that the Petitioners have made Respondent No.2 to believe that the business relations between the parties would be maintained and his money would be repaid on a specific assurance given in writing.

22. In the light of the above, I do not find that the impugned order of the trial court and the judgment of the Revisional Court could be termed as being perverse and erroneous in the light of the ratio laid down by the Hon'ble Supreme Court in the matter of ***Syed***

Yakoob V/s K.S.Radhakrishnan & Others, AIR 1964 SC 477 and in the matter of ***Surya Dev Rai V/s Ram Chander Rai & Ors. AIR 2003 SC 3044***.

23. Considering the above, these petitions are devoid of merits and hence stands dismissed.

24. At this stage, learned Counsel for the Petitioners submits that liberty may be granted to the Petitioners to move the appropriate court for clubbing of the eight matters together, since all these eight matters are before the same trial court. Learned Counsel for Respondent No.2 submits that if the Petitioners make such an application, the appropriate Court may consider the above request.

25. In the event the Petitioners make such request before the appropriate court, the same can be considered by the Competent Court on its own merit.

(RAVINDRA V. GHUGE, J.)