

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2236 OF 2013

M/s. Frankfinn Aviation Services
Private Limited

.... Petitioner

Vs.

The State of Maharashtra & Anr.

.... Respondents

Ms Meenakshi M. with Mr. Harsh Parte i/by
Mr. Shreeram Shirsat for the Petitioner.

Mr. K.V. Saste, APP, for the Respondent-State.

CORAM: S.C. DHARMADHIKARI &
SMT. SADHANA S. JADHAV, JJ.

DATE : APRIL 21, 2017

P.C:

1. By this petition under Article 226 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure, 1973 the petitioner seeks quashing of an FIR being C.R.No.124 of 2013, dated 2-6-2013, registered at Chinchwad Police Station, Pune.

2. The offences alleged are punishable under Sections 420,

465, 467, 468, 471 and 34 of the Indian Penal Code.

3. Pertinently, the petitioner/accused before us is a Private Limited Company. It is undisputed that this very FIR was sought to be quashed by a co-accused and the writ petition filed in that behalf being Criminal Writ Petition No.2695 of 2013 was dismissed by this Court on 12-8-2013.

4. The learned Advocate appearing in support of this petition, however, would submit that the co-accused's petition was argued without complete materials, including those referred in the FIR. She would submit that upon reading the FIR and assuming whatever stated and alleged therein as true and correct, no offence is disclosed. She would submit that the FIR itself refers to the functioning and operation of the petitioner and particularly the Institute. She has, therefore, submitted that the complainant's case that he was assured part-time job is belied by the contents of an Agreement which is in writing. The complainant is an educated person, having perused it and having understood all its clauses, he has voluntarily signed it. The Clause 22 of the said Agreement does not assure, much less give any guarantee of any job. In such circumstances, the record, as revealed during the course of the investigation and particularly the

documents referred, the FIR itself would denote that the petitioner did not give any such assurance.

5. It is then contended that the complainant, on 26-5-2009, was asked to deposit a fee of Rs.30,000/- in cash and six post-dated cheques to avoid increase of fees due to service tax. This is an absurd allegation, according to the learned Advocate, inasmuch as if the course was not free but for a consideration or fee, then, the manner in which the fees are charged and recovered by itself projects no offence. The complainant having understood the nature of the course and studies volunteered to enroll himself and that is why he came forward and paid the fees. Once from inception there was never any guarantee of any employment or job opportunity, then, such a vital ingredient and necessary to establish cheating has not been *prima facie* spelt out.

6. It is stated that the complainant alleges that he completed the course in November, 2010 but was not given the certificate except evasive answers. Not forwarding the certificate or not providing it, without anything more is no offence. Finally, it is urged that the Chinchwad Centre of the petitioner/Institute was closed in the year 2011 and the Mumbai office also did not give any reply. There was a valid explanation throughout provided that the rented premises at

Chinchwad were required to be vacated and the landlord called upon the Company to do so. That is why the office was shifted. There was never any intent to evade the queries. It is also in these circumstances that the vital and essential ingredients of cheating, which is an offence alleged, are not spelt out. This is not a case of forgery for every document has been brought to the knowledge of the complainant with its contents. He has perused it. The contents remain the same. That another version or interpretation of the contents, therefore, does not spell out the offence of forgery. The certificates obtained by certain students by itself cannot be a factor so as to enable the complainant to allege cheating. It is also submitted that the course not being authorised or having no permission of the State or the Central Government or any Governmental authority cannot, therefore, be the basis to allege cheating.

7. In support of the above contentions, reliance is placed upon an Order, dated 7-4-2015, passed by this Court in Anticipatory Bail Application No.1176 of 2014 *{Rakesh Chogmal Agarwal Vs. State of Maharashtra & Anr.}* and connected applications, granting anticipatory bail to the accused therein. Certain observations therein are relied upon coupled with the tests laid down in the Judgment of

the Hon'ble Supreme Court in the case of *State of Haryana and others Vs. Ch. Bhajan Lal and others*, reported in AIR 1992 SC 604.

8. We have carefully perused the writ petition with all the annexures thereto with the able assistance of the petitioner's Advocate. We have also perused the relevant case law.

9. The FIR, which is registered by Chinchwad Police Station, Pune on 2-6-2013 at the instance of one Prashant Laxman Phapale, a resident of Akole Taluka, District Ahmednagar states that he is a student. He completed his XIIth Standard course in the year 2009. Thereafter, he noticed a hand-bill of the petitioner/Institute. It states that Frankfinn Institute of Air-Hostess Training provides such training. There are specific allegations that certain persons were soliciting responses from the students. The complainant provided his and his uncle's address. Thereafter, they were contacted and were invited for a seminar at Sangamner on 26-4-2009. One Urvashi Khilani and her associates represented the said Institute, namely, Frankfinn Institute of Air-Hostess Training, and there was an interview. Thereafter, the complainant states that, there was an assurance given that the same education and training, which is provided abroad, will be provided by this Institute but at a lesser fee.

The three courses and the fees for the same are then set out.

10. There was again a contact established with the complainant's uncle and the complainant and his uncle were informed that on 30-4-2009 certain persons and associated with the petitioner/Company/Institute would be visiting Sangamner. That is how the complainant alleges that accompanied by his father and others he made enquiries. He pointed out that he is the son of a farmer and will not be able to afford such high fees. Then, his father made enquiries and he was told that the course fee is Rs.1,60,000/- and Rs.3,750/- are registration charges. Once again the father expressed his helplessness. Thereafter, certain lumpsum fees and instalments were stated to be agreed. Even that was not possible. Yet, the registration fee and Rs.15,000/- were deposited by the complainant's father. Thereafter, the complainant and his father were assured that there would be a call from the Centre. The complainant was told to contact the Chinchwad Centre. Thereafter, he contacted them and though he stated that he was poor and cannot afford the fees, he started attending the course. He somehow managed and arranged a deposit of Rs.30,000/- as fees. The cheques were handed over to one Urvashi and one Mubashir Shaikh and that recently they had left the

services. There was a part-time employee of the petitioner/Institute and he kept on assuring the complainant of a job opportunity or a job itself. Though the course was completed by him, no completion certificate was forwarded. Every time evasive replies and answers were given. The correspondence also did not result in anything worthwhile. It is in these circumstances that the complainant alleges that from inception a job opportunity was guaranteed, he was lured into parting with huge sums and which he arranged, though very poor. Having realised that he is taken for a ride on obtaining certain additional information, he became aware that such Institutes as the petitioner-Company have no recognition. They do not have any approval for their courses nor are they affiliated to the bodies/agencies who can be said to be authorised and empowered to administer and manage such educational courses or impart such training. It is in these circumstances that by making further allegations, he proceeded to lodge this FIR.

11. The petitioner's Advocate would invite our attention to the Agreement. Firstly, the arguments proceed on the footing that a clause from the Agreement can be picked and read out of context or in isolation. Every such Agreement and document must be read as a

whole. All clauses thereof have to be read together and harmoniously. So perused and read *prima facie*, it is apparent that this was an Agreement between Frankfinn Institute of Air-Hostess Training, a division of Frankfinn Aviation Services (P) Ltd., and the complainant. The recitals indicate that the Institute entered into an exclusive tie-up with Edexcel International, U.K., for conducting training courses, namely BTEC High National Certificate (HNC).

12. The complainant approached the Institute for taking an admission and was admitted to the course. Apart from the student/complainant being required to follow strict discipline and maintain proper decorum, the student has to be regular and punctual in attending the classes and should complete the minimum requirement of attendance. What has been informed to him is that he may have to go outside the Centre and he has agreed for the same. The student was told to pay the fees regularly and non-submission of fees would attract the consequences as spelt out. Even the courses cannot be given up mid-way and mid-term. The usual clauses are then set out. What is then important for our perusal is Clause 21 onwards. It is stated that in-flight and airport ground handling services familiarisation with Jet Airways will be provided by the petitioner/Institute to the student.

Prima facie, we do not see any reason for the Agreement to spell out an in-flight and airport ground handling services familiarisation with Jet Airways. If there was no assurance or guarantee of any job, then, we do not see why a reference is made to any airways. The familiarisation with the in-flight and ground handling services have to be a part and parcel of the course. Later, it is set out in Clause 21(ii) that for any reason if Jet Airways discontinues the agreement of providing in-flight and airport ground handling services familiarisation, then, the Institute shall either charter an aircraft from a leading airline or buy tickets so as to provide in-flight exposure to the student/s. If the student has to buy his own ticket, then the reimbursement of charges to that extent would be made. The student has to agree to strictly follow the instructions of the Institute, its employees, agents, airport staff and airline's personnel. He has to render full co-operation to avoid any mishap or accident during in-flight familiarisation. Then, Clause 22 follows and which says that the Management of the Institute shall put its best efforts to provide the best possible job assistance services after the conclusion of the course, as mentioned in the prospectus. *Prima facie* therefore, Clauses 22 and 23 may enable the petitioner to urge that job assistance services were to be provided but no job guarantee. Still this is not the stage where

we are required to construe the Agreement and conclusively and decisively. *Prima facie*, this very Agreement incorporates some arrangements and further an assurance to provide a job at the conclusion of the course. The Clause 24 throws a light on these previous clauses and therefore reads as under:-

“24. “THE STUDENT” hereby agrees that he/she during the 'Course' and also during the period/term of the Job assistance i.e. till expiry of 18th month from the day and date of completion of the 'Course', shall not:-

(a) Join as employee/be in employment – part-time and/or full-time of any other Air Hostess Training Institute or Academy or any organisation, firm, Company or any entity, whose one of the divisions is functioning as Air Hostess Training Institute or Academy in India/Abroad.

(b) Join any training course/programme of any other Air Hostess Institute or Academy in India/Abroad.

(c) Promote in any manner, whatsoever, course/training programme of any other Air Hostess Training Institute/Academy.

(d) Defame FIAT directly or indirectly and/or make any verbal or written statement which is derogatory/defamatory pertaining to 'FIAT' and the 'COURSE/S' conducted by 'FIAT'.

(e) Give the Course material, manuals, book/s and or photocopies of the same and/or disclose the same in any other manner, whatsoever to any other person (other than FIAT's students), organisation, firm, company or any

other entity, whosoever.

(f) Start competitive activities either himself or through his family members, which includes but not limited to similar business as that of 'FIAT' directly, indirectly, or in any manner, whatsoever in India and/or Abroad.

(g) Disclose to any other person, (other than 'FIAT' Students) or organisation, firm, company or any entity, whosoever, any information received by him/her from 'FIAT' as part of 'Job Assistance Services', which includes but not limited to job vacancies information in different airlines, hospitality, travel and service sector organisations in specific, besides other organisations in general received by him/her from 'FIAT' as part of 'Job Assistance services'.

(h) Indulge in any anti 'FIAT' activity, whatsoever.

As the 'FIAT' is providing Job Assistance to Students, purely on complimentary basis and Student is not paying any amount for the same, 'THE STUDENT' is aware and hereby agrees to the 'FIAT' right to terminate/stop his/her complimentary Job Assistance services to be provided by 'FIAT' to 'THE STUDENT', if he/she does anything specifically prohibited in sub-clauses (a) to (h) of clause 24 of this agreement and the decision of 'FIAT' shall be final in this regard. Further, if the student has not finished the 'COURSE' and does anything specifically prohibited in sub-clauses (a) to (h) of clause 24 of this agreement, FIAT reserves the right to expel student from the course."

13. Following that is a stipulation that the Institute reserves the right to stop the job assistance in case the student does not report for interview after confirmation thrice, or does not join the

organisation after getting selected and receiving the selection letter twice.

14. We, therefore, are unable to agree with the learned counsel appearing for the petitioner that nothing like a promise, assurance or guarantee can be spelt out from this Agreement. If this was the Agreement or prior representation based on which the complainant was made to part with monies, then, any stipulation or condition, mentioned in the document but read in a isolated manner, at this stage would not be conclusive. *Prima facie*, we find that the allegations contained in the complaint and read as a whole disclose commission of an offence. We cannot see how we can term this complaint as *mala fide* or an abuse of the process of the Court, or any harassment or embarrassment to an Institute like the petitioner.

15. **Ch. Bhajan Lal** (supra) spells out the tests but the applicability of the tests to particular facts and circumstances is the relevant governing factor. Ultimately, that would depend upon the facts and circumstances of each case. The applicability of the tests, therefore, to the individual facts and circumstances in each case is what is material and relevant for us. We do not think, therefore, that any contentions and which touch the merits of the matter can be

upheld at this stage. The aspect of delay or the plea of the course not being recognised or no approval or affiliation being granted need not be gone into at this stage. How much weightage has to be given to each of these allegations would depend upon the future progress of the case. Today, post 2-6-2013 and pursuant to an ad-interim order passed by this Court on 21-6-2013 the investigations may have continued but no final report has been allowed to be submitted by this Court. We do not think that we can continue such an arrangement when the petitioner/accused has failed to make out a case for intervention in our writ jurisdiction or in exercise of our powers under Section 482 of the Code of Criminal Procedure, 1973.

16. Pertinently, in a very recent decision the Hon'ble Supreme Court of India has clarified that such powers have to be exercised cautiously, very sparingly and not as a general rule. Another impression which is gathered because of the Supreme Court's pronouncement in the case of ***Gian Singh v. State of Punjab***, reported in (2012) 10 SCC 303, therefore, being clarified to the effect that law relating to continuance of criminal case, either when the complainant and the accused have settled their differences or otherwise, would not necessarily mean that this Court could give up its judicial restraint and

proceed to interfere. All the more it should tread cautiously. The power should be utilised not to scuttle the investigation or to avoid facing trial. More so, when a *prima facie* case is disclosed against such person who invokes this Court's jurisdiction.

17. In such circumstances, therefore, any reliance on the Judgment of the Hon'ble Supreme Court or the order passed by this Court at the stage of anticipatory bail which contains distinct, tentative and *prima facie* findings, is misplaced.

18. As a result of the above discussion and by clarifying that our order passed in this criminal writ petition contains only tentative and *prima facie* views and they shall not bind the competent criminal Court while finally deciding the case, we dismiss this petition.

(SMT. SADHANA S. JADHAV, J.)

(S.C. DHARMADHIKARI, J.)