IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2819 OF 2014

Satish Narayan Nandre Petitioner
versus
Senior Inspector of Police, Bandgarden Police Station, Pune and others Respondents

Mr.Dinesh P. Adsule with Mr.Ganesh M. Mohite for Petitioner.
Dr.F.R.Shaikh, APP, for State.
Mr.Prashant M. Patil with Mr.Hrishikesh Giri for Respondent no.4.

CORAM : S.C.DHARMADHIKARI AND PRAKASH D. NAIK, JJ.

DATE : 29th March 2017

PC :

1. By this writ petition under Article 226 of the Constitution of India, the Petitioner seeks quashing of a first information report registered against him at Bundgarden Police Station, Pune. The FIR No.187 of 2013 was registered on 19th October 2013 alleging offence punishable under Sections 420, 406 and 34 of Indian Penal Code.

2. The contention of Mr.Adsule appearing for the Petitioner is that the Petitioner is conducting a lawful activity. That lawful activity is, that on due authorisation and permissions from countries abroad, he could have assured the parties like the Petitioner that on payment of certain charges and completion of certain procedural

requirements, they can migrate to those countries from India. Having been duly authorised to represent those countries in India, it is the Petitioner who accepted requisite monies, documents and other details from the Petitioner. From his side, the Petitioner made all arrangements so as to enable him to migrate to Canada. After due receipt of papers, documents and monies, eventually it was the Republic of Canada which conveyed alteration in its migration policy. It is, therefore, apparent that once that Government did not permit migration of citizens of India, then, it is not a case of cheating by the Petitioner. The Petitioner merely acted on behalf of the country abroad. Reliance is placed on the judgment of Hon'ble Supreme Court in the case of **International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others Vs. Nimra Cerglass Technics Pvt.Ltd. and another**[1].

3. Upon a perusal of the statement of the complainant and reading it as a whole, we are unable to agree with Mr.Adsule. What the complainant projected was a specific grievance and based on that an allegation. He invited attention of the concerned Police official to an advertisement published in the year 2003. That was published by a company styled as Amey Worldwide (International) Services Pvt.Ltd. The complainant visited its office, met the marketing head and Asia region director of said Amey Wordwide. They took his bio-data, other details and informed him that he is eligible to migrate to Canada. They, therefore, collected a nominal fee of Rs.300/- and forwarded it to Amey Worldwise, Canada office. Then complainant was directed to attend certain seminars. He attended those

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seminars. That seminar was arranged and conducted by said Amey Worldwide and its owner Satish Nandre. At such seminars interested citizens would remain present. The complainant was one of them. The allegation is that Satish Nandre would by his mannerism and polite speaking style, invite lot others as well to attend such seminars on migration and used to obtain from them all immigration details. The complainant also after attending such seminar, handed over Rs.25,000/- by cheque to Amey Worldwide Services. He has specifically registered himself for migration to Canada. There is an agreement on the stamp paper of Rs.20/- which was executed. The agreement incorporated the terms and conditions on which the services were to be provided. Then a further cheque of Rs.47,000/- as per the agreement was handed over to Sujit Varpe. In the year 2004, the complainant appeared for an examination viz. English Language Testing System (IELTS) conducted by British Council. That examination was conducted in Pune. The complainant cleared that examination. The marks obtained by him in IELTS examination, the educational qualifications, work experience etc. were communicated to Canadian High Commission, office at New Delhi by said Amey Worldwide. The complainant was awaiting further communication. In the meanwhile, he also cleared French Language examination. Then on 8th October 2004, one file number was communicated by Canadian High Commission to said Amey Worldwide office. The complainant mentions the file number. That was communicated to the complainant in person by said Amey Worldwide at its office. The Canadian High Commission had informed that the request in the letter would be processed in 33 months. At that time Satish Nandre obtained from the Petitioner in dollars a sum of Rs.50,000/-. That was also paid by cheque. That was also handed over to Sujit Varpe. The complainant has all the receipts against payments made to Amey Worldwide. Thereafter from time to time he made inquiries. Since the period of 33 months expired, the complainant was anxious and made inquiries in the office of Amey Worldwide, at Pune. When he made inquiries, he realized that entire set up of Amey Worldwide has changed. One Jeevan Samgir was the person and employed by Amey Worldwide who he contacted and he informed the complainant that processing is still going on and no communication has been received from Canadian Government. It is in these circumstances that after waiting for considerable time and also making further payments as narrated in the complaint which have been collected in the name of Canadian High Commission, it is alleged that the said Amey Worldwide and its staff were dodging the requests and questions of the complainant. Their evasive answers to the pointed queries revealed that they were not inclined to adhere to their commitment made to the complainant from time to time. After that on 15th May 2013, a further enquiry was made but on that day the complainant found that the office of Amey Worldwide is closed. There was a lock placed on its doors. The office was closed even at a further inquiry. Then some time in June-2013, the complainant received a packet from Amey Worldwide. In that, the Canadian Government is stated to have returned visa processing fee by cheque. This was an annexure to the letter of Amey Worldwide and sent by Manisha Londhe. Then the complainant tried to contact the officials of this company and with a view to obtain refund of the monies which were paid and which was accepted on the specific assurance to the complainant that said Amey

Worldwide (International) Services Pvt.Ltd was authorised and duly represented the Republic of Canada in the process of migration of the complainant from India to Canada. Having realized that all these monies were collected on the above specific assurances, now that assurance is not going to be honoured, that the promise and assurance based on which monies have been paid but not returned, would constitute an act of cheating. That is how the FIR has been registered.

4. We have gone through the FIR and the entire statement of complainant.

5. In the judgment of Hon'ble Supreme Court, the facts were that there was a private limited company involved in the manufacturing and marketing of scientific devices and equipments. The Respondents before the Supreme Court filed a complaint against that company and its officers alleging that they represented that they are possessed of technology for manufacture of extruded ceramic honeycombs which is used in manufacturing of catalytic converters which are used in automobiles for controlling emission. On that representation, the respondent entered into an agreement dated 18th June 1999 with the Appellant for transfer of technology for the manufacturing process of extruded ceramic honeycombs inclusive of transfer of extrusion die fabrication technology which is an integral part of the manufacturing process for a consideration of Rs.10 lakhs in installments exclusive of royalty amount. The allegation is that in pursuance of the agreement, the Respondent was permitted to establish its industrial unit within the campus of Appellant. For that,

Rs.1.30 crores were spent for purchasing and installing the comprehensive machinery. Thereafter trial runs were taken and the technology handed over was found not efficient and adequate for the purpose for which the agreement was executed. It is in these circumstances that the allegations revealed a further act on the part of complainant. These allegations are noted in paragraphs 2 and 3 of the judgment of Hon'ble Supreme Court. Thus, the allegations are that accused company and its officers did not perfect the honeycomb technology sufficient for commencing commercial production and by their false representations induced the complainant to spend high amounts and that is how they have committed an offence of cheating. It is on such complaint that the investigating officer upon investigation submitted final report stating that the dispute is purely of civil nature. No criminal offence was made out. The complainant protested and argued before the Magistrate that the report of the investigating officer should not be accepted. The Magistrate took cognizance of the offence under Section 420 read with Section 34 of IPC and passed an order summoning the accused-company. That is how the petition under Section 482 of the Code of Criminal Procedure, 1973 (`the Code') was filed before the High Court to quash the proceedings. That also was dismissed. The order of High Court was challenged in the Supreme Court. The Supreme Court noted these basic and undisputed facts. It noted that the accused-company was a grant-in-aid research and development institute under the Ministry of Science and Technology, Government of India. It carries out research work to be used in various fields. It is a part of its development work that it developed technology for manufacture of extruded ceramic honeycombs which is used in manufacturing of catalytic converters which are used in automobiles for controlling emission. The accused-company is said to have held intellectual rights of the process for extruded ceramic honeycombs and extrusion die fabrication technology. The technology transfer agreement with the complainant to transfer the know-how related to the process for extruded ceramic honeycombs as per specification indicated thereon in the annexure to the agreement. The agreement details the modalities of the terms and conditions for grant of license. Eventually, it was a technology transfer agreement. The further processes as undertaken and conducted or carried out revealed that the technology which was styled as perfect honeycomb technology, was an imperfect technology and the targeted specification of the end project could not be achieved. That means that there was from inception a inducement and dishonest, being essential ingredient of cheating was not established. That is how highlighting the essential ingredients, that the observations relied upon by Mr.Adsule have been made. These observations in paragraph 15 and 16 of the judgment of Supreme Court are settled legal principles and essential ingredients to establish an offence of cheating. There is, therefore, a clear distinction in law between a mere breach of contract and the offence of cheating. However, application of these settled principles to the facts and circumstances in each case is what is relevant for us. The tests are too well settled. If it is established that the intention of the accused was dishonest at the very inception when he made a promise and entered into a transaction with the complainant to part with property/money, then the liability is criminal and the accused is guilty of offence of cheating. On the other hand, if all that is established is that a representation made by the accused has subsequently not been kept, criminal liability cannot be fastened on the accused and the complainant is required to adopt the remedy for breach of contract in a civil Court.

6. It is equally well settled that power under Section 482 of the Code is exceptional in nature and is to be exercised sparingly. It is only to quash a complaint read as a whole on the face of it does not disclose commission of a offence. These tests even if applied to the present facts and circumstances, the complaint before us cannot be quashed. The Petitioner, prima facie, from inception assured the Respondent no.4 that he can arrange his migration to Canada. Monies and funds/fees were collected from him. The complainant was made to go through the whole process as if the Petitioner and his agency represent the Republic of Canada in India and all applications for migration to that country be routed through the Petitionr's agency. The Petitioner's company was a private limited company and totally controlled by him. Prima facie, therefore, from inception there was a dishonest intention and hence a promise and assurance was given to Respondent no.4 that on payment of monies to the Petitioner, he can migrate to Canada. Now, it is urged that everything was dependent upon that country's policies. If that is so, then, why the said aspect was not clarified and if everything fell through because of Republic of Canada's immigration policies, how the promise in the first instance can at all be given, prima facie, reveals the criminal intent.

7. We do not see how at this stage the argument of learned advocate for Petitioner on the change in policy of Canadian

Government resulted in cancellation of complainant's migration to Canada, satisfies the tests referred above. We do not think that this line of defence is enough to hold that the complaint read as a whole does not disclose commission of the offence of cheating. We find that essential ingredients are spelt out. Suffice it to state that these ingredients attracting the offence can be culled out from the complaint and which we do not find can be interpreted otherwise at this stage. We are unable to agree with the advocate for the Petitioner.

8. As a result of these observations the application fails and is dismissed. All ad-interim and interim orders stand vacated forthwith.

9. At this stage Mr.Adsule states that on 15th September 2014 this Court restrained the Respondents 1 to 3 from filing a charge-sheet, if not already filed. He states that charge sheet is yet to be filed and this order may be continued for a reasonable period to facilitate the applicant to approach a higher Court. The request is opposed by learned advocate for the complainant. Having noted this request but finding that we are not in agreement with Mr.Adsule on his primary contention, then, there is no warrant to continue this interim direction. The request in that behalf is rejected.

(PRAKASH D. NAIK, J.) (S.C.DHARMADHIKARI, J.)

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