

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5022 OF 2004**

- 1 Uttar Pradesh Co-operative Federation Ltd.
 Plot Nos. 4 to 9, Mafco Yard,
 Vashi, Navi Mumbai.
- 2 Mr. D.K. Sharma
 Age : 46 years,
 Regional Manager, U.P.C.F. Ltd.
 Plot Nos. 4 to 9, Mafco Yard,
 Vashi, Navi Mumbai. Applicants

Vs.

- 1 Ichibaan Automobiles Pvt. Ltd.
 Metro Estate, 178, C.S.T. Road,
 Kalina, Santacruz (East),
 Mumbai – 400 098
- 2 The State of Maharashtra Respondents

Mr. C.M. Kothari, Advocate for the Applicants.
None for Respondent no.1, despite service.
Ms. Pallavi Dabholkar, A.P.P. for the respondent- State.

Coram : Smt. R.P. SondurBaldota, J.
Date : 10th February, 2017

JUDGMENT :-

- 1 This application filed under Section 482 Code of
Criminal Procedure (“Cr.P.C.”) is for quashing of the order 19th

April, 2004 passed by the trial Court issuing process against the applicants in CC No.799/2003 under Section 406 read with Section 34 Indian Penal Code.

2 Applicant no.1 is Uttar Pradesh Co-operative Federation Limited having it's Head Office at Lucknow and Branch Office at Mumbai. Applicant no.2 is the Regional Manager of applicant no.1. The applicants carry on business interalia of Cold Storage and Warehousing. Respondent no.1, the original complainant is a private limited company.

3 Applicant no.1 has it's Warehouse at Plots No.4 to 9, Mafco Yard, Vashi, Navi Mumbai. It had invited tenders from intending licensees through a newspaper advertisement published on 24th October, 2002 for the purpose of using it's RCC Warehouse and open space, admeasuring 16,500 sq. feet on leave and license basis. Respondent no.1, by it's letter dtd. 10th January, 2003 gave it's offer and also remitted a sum of Rs.1,56,885/- to applicant no.1 towards Earnest Money Deposit, which was equivalent to one month's license fees. The said deposit was towards execution of Leave and License agreement on acceptance of the offer of respondent no.1. It was agreed between the parties that if respondent no.1 failed to execute the Leave and License agreement, the deposit would be forfeited. Applicant no.1, on receiving the offer dtd. 10th January, 2003, informed respondent no.1 that the terms and conditions of the

agreement were already given to it and called upon respondent no.1 to execute the Leave and License agreement. Respondent no.1 however, for some reason or the other delayed execution of the agreement. Later it by it's letter dtd. 29th March, 2003, it stated that it was withdrawing it's offer and demanded refund of the amount of Earnest Money Deposit. This led to a dispute between the parties on conclusion of the contract between the parties for Warehousing and forfeiture of the Earnest Money Deposit by applicant no.1. When applicant no.1 informed respondent no.1 that the Earnest Money Deposit is forfeited, respondent no.1 on 24th November, 2003 filed a private complaint in the Court of Judicial Magistrate First Class, Vashi alleging offence punishable under Section 406 read with Section 34 Indian Penal Code and the trial court issued process upon the complaint and called upon the applicants to remain present before it on 27th December, 2004.

4 Mr. Kothari, the learned advocate for the applicants submits that bare reading of the complaint sufficient to know that, it does not make out any offence against the applicants. Since the transaction between the parties was purely a civil transaction, even if it is to be said that there is genuine dispute between the parties as regards forfeiture of the Earnest Money Deposit, respondent no.1 could not have given it colour of criminal offence of misappropriation of money, so as to prosecute the applicants for the offence punishable under

Section 406 Indian Penal Code for breach of trust.

5 A copy of the complaint is annexed at Exhibit “A” to the application. It's perusal supports the argument of Mr. Kothari. The complaint merely narrates the events of advertisement, discussions about the Earnest Money Deposit amount, terms and conditions of the Warehousing agreement and the bald allegation that there were pressure tactics adopted by the applicants. According to the complaint, forfeiture of the Earnest Money Deposit amounts to misappropriation because there is no clause therefor in the draft agreement supplied by the applicants. The complaint as filed by respondent no.1 misses out one of the important ingredients of the offence of criminal breach of trust, which is of dishonest intention. A dispute between parties as regards an agreement relating to forfeiture of Earnest Money Deposit and forfeiture of the deposit by the applicants can under no circumstances be said to be dishonest misappropriation of the amount of deposit by the applicants towards their own use. The impugned order therefore cannot be sustained. The application is allowed in terms of prayer clause (c).

(Smt. R.P. SondurBaldota, J.)