IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1610 OF 2016

Ashawari Prasad and Ors .....Applicants

V/s.

The State of Maharashtra and another ....Respondents

Mr. R. B. Mokashi i/b Mr. Ishwariprasad Bagaria
Advocate for the Applicants.
Mr. Sanjiv Kadam i/b Mr. Rajesh Ravindran
Advocate for Respondent no. 2.
Ms. S. K. Shinde PP for the State a/w
Ms. P. P. Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 20th MARCH, 2017.

PC :

1) Heard. This is an application under section 438 of the Code of Criminal Procedure, 1973. Applicants herein are apprehending their arrest in crime no. 580 of 2016 registered at Dindoshi Police Station for offence punishable under sections 406, 408, 420, 463, 465, 477 (A), 468, 471 r/w 120 (B) of the Indian Penal Code.

2) It is the case of the prosecution that on 26/07/2016, Mrs. Neeta Rane lodged a report at the police station alleging therein that in the year 2007, she was running a courier business. She was putting in best of efforts to build up her business. She met Mrs. Preeti Anil Kumar and Asavari Prasad who informed her that their respective husbands are experts in regulating courier servie and they have sufficient technical know how about the said business. She was also informed that Anilkumar is working with United Parcel Service (UPS) whereas Chaman Prasad is associated with Pafax Courier Company. Complainant was hopeful of increasing her business and therefore had agreed to involve all four of them in courier business. An agreement was executed on 01/02/2008 between the complainant and the applicants. Allotment of shares as per agreement was that the complainant would be receiving 40% and both partners would be receiving 30% each. An account was opened in Dena Bank in the name of the company. In 2013, the account was opened in HDFC Bank, Borivali and Bank of Maharashtra, Kalyan Branch. She did not interfere with the functioning of the business for the simple reason that she had faith in her partners who claimed to be experts in courier service.

3) In 2012, she realized that there is no promotion in the business and that there were complaints from the consumers. She therefore, inquired with the partners and was informed that the losses are due to recession in market. She started suspecting the functioning of the business. Their main business was with Axis Bank and therefore, complainant made inquiries with Axis Bank. She learnt that all the transactions were being carried through HDFC Bank. Upon further inquiry, she had learnt that applicants herein had floated a new firm in the name of 'XOL Solutions'. They had given a letter to the banks informing them that the firm 'Xpress Options' has merged into 'XOL Solutions'. The payments of Axis Bank was also received by XOL solutions. It was further noticed that the letters which were given to the banks are allegedly signed by the complainant. Complainant had informed the banks that she had not signed any such documents. There were several documents which were purportedly shown to be signed by the complainant. In the course of investigation, it had transpired that there are arbitration proceedings pending in this Court between the parties. It is further revealed that the partners had four accounts with Dena Bank, HDFC Bank, Bank of Maharashtra and Kotak Mahindra Bank. Two signatures on the forms for

opening bank accounts were purportedly singed by the complainant, however, it is the case of the complainant that she has not signed the same. She has denied her signature. The bank officer had also submitted to the investigating agency that the form for opening the account was neither signed by the applicant nor by applicant nos. 1 & 2. Form-A was a notarized document but the Notary was not found at the given address. The leave and licence agreement dated 24/02/2014 also is purportedly signed by the complainant, however the said signature is denied by her.

4) The learned Government Pleader Shri. S. K. Shinde submits that applicants have not submitted original balance-sheet in the course of investigation on the ground that balance-sheets are with chartered accountant. Investigating agency had then recorded the statement of chartered accountant Mr. Bhavesh Savala who has categorically stated that original balance-sheets are not with him.

5) Learned counsel for the applicants submits that the complainant has not stated in the F.I.R. that arbitration proceedings were pending. It is pertinent to

note that F.I.R. was lodged on 26/07/2016 and the Arbitration Petition No. 1287 of 2015 filed by one of the applicant was withdrawn on 25/08/2015 and the complainant was respondent in the said petition.

6) In the order dated 24/08/2015 in Arbitration Petition No. 1640 of 2015, a specific grievance was made by the complainant herein that the respondents have deprived legitimate share of the petitioner and had carried such activities that are prejudicial to the interest of the said firm 'Xpress Option'. It was brought to the notice of the Court that on 01/07/2015, a letter was submitted to the Axis Bank by the applicants and XOL Solutions informing the bank that all bills would be raised in the name of XOL solutions. The banks with whom the applicants had opened new bank accounts had also refused to furnish details of transactions. The Hon'ble Court hearing the Arbitration Petition No. 1640 of 2015 had recorded a finding that there is substance in the submission made by the complainant that the entire business of the said firm is diverted by the respondent nos. 1 to 4 to respondent no. 5. Present applicants are respondent nos. 1 to 4 and the firm XOL Solutions is respondent no. 5. At that stage, it was argued that the transactions were

carried out by the applicants in the ordinary course of business by re-constituting the said firm and it was permissible under partnership deed. It was argued at that stage that the petitioner therein was a sleeping partner. However, today, it is argued that the complainant had knowledge about the same. In the arbitration petition, the Hon'ble Court was pleased to grant interim relief in terms of prayer clause (A) to (D). Subsequently, on the next date, Mr. Karl Shroff was appointed as mediator.

7) In the course of investigation, Axis Bank has given a copy of the letter addressed to Axis Bank on 30/06/2015 in which it is mentioned as follows:

> “*Dear Sir,*
>
> *Kindly take note that with effect from 1st July 2015 we, Xpress Options, partnership firm registered under the partnership Act, 1932 and having Pan as AAAFX0603J shall continue its operations in the name and style of XOL SOLUTIONS PRIVATE LIMTED, a private limited company registered under the companies act, 2013 having CIN as U74999MH2015PTC264561 and PAN as AAACX1763E”.*
>
> *Kindly note from 1st July 2015 all bills will be raised by XOL SOLUTIONS PVT LTD enclosed documents for your reference.*

For,
XOL SOLUTIONS PRIVATE LIMITED

Sd/-
DIRECTORS
(Chaman Prasad) (R. Anil Kumar)".

8) Axis bank has also submitted a letter given to the bank by the applicants for change of bank account details. Upon perusal of the material collected in the course of investigation, it is clear that applicants have not only cheated the complainant but had submitted forged and fabricated documents to the banks and have diverted funds in newly floated firm 'XOL Logistics Distribution'.

9) It is the case of the prosecution that the complainant has been cheated to the tune of Rs. 2 Crores 75 Lacs. Applicants had made a submission before the Sessions Court that the facts are admitted but they are not the authors of the said fabrication but one Rahul Sharma is responsible for the same. It is also seen from the papers of investigation that an amount of Rs. 42 Lacs was shown to be given as salary to the directors per year. It was submitted before the Sessions Court that one Rahul Sharma who was working in Axis Bank has

advised the applicants and on his instructions all transactions have taken place as he had provided business of said bank to the courier firm Xpress Options. It was urged that Rahul Sharma had directed the applicants to form a private limited company. Applicants have changed their stance from time to time. It is pertinent to note that applicants were not granted interim protection by the Sessions Court. Application was rejected by an order dated 03/09/2016. Applicants approached this Court by filing present application and on 20/09/2016, the learned APP had sought time to take instructions from the Investigating Officer and therefore, this Court (Coram : A. S. Gadkari, J.) had granted interim protection to the applicants. Much capital is being made of the fact that there is no reference to arbitration proceedings in the F.I.R. On the basis of the said statement, interim relief was granted. It is further pertinent to note that applicants were not granted interim protection on merits of the matter. They were asked to join investigation, however, the learned GP submits that there is no co-operation from the applicants whatsoever.

10) On 24/10/2016, application was heard on merits by this Court (Coram : A. S. Gadkari, J.) and what was taken into consideration was that F.I.R. is

silent about the pendency of arbitration proceedings and therefore, applicants were granted protection.

11) Upon perusal of the papers of investigation, it is clear on the face of record that applicants had forged the signature of the complainant. They had fabricated documents to show that Xpress Solutions was merged with XOL Solutions. They had given letters to that effect to the respective banks thereby misleading the banks. An offence under section 463 and 464 of the Indian Penal Code is made out.

12) Section 463 and 464 of the Indian Penal Code reads as follows:

> "***463. Forgery –*** *[Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*
>
> ***464. Making a false document*** *[A person is said to make a false document or false electronic record -*
>
> *First – Who dishonestly or fraudulently -*
>
> *(a) makes, signs, seals or executes a document or part of a document;*
> *(b) makes or transmits any electronic record or part of any electronic*

record;
(c) affixes any [electronic signature] on any electronic record;
(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],
with the intention of causing it to be believed that such document or part of with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly – Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly – Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]"

13) Hence, it can be said that applicants had forged and fabricated the documents. It is in these circumstances that applicants do not deserve discretionary relief under section 438 of Code of Criminal Procedure, 1973.

14) Application, being sans merits, stands rejected.

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15) At this stage, the learned counsel for the applicants prays that this order be stayed.

16) Taking into consideration the gravity of the offence, the oral prayer for staying the order is declined.

(SMT. SADHANA S. JADHAV, J.)