

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 395 OF 2015

Vinod S/o Suryakantrao Kurundkar,
Age: 62 years, Occ: Nil,
R/o Brahman Galli, Basmat, Tq. Basmat,
Dist. Hingoli.

... PETITIONER
(Orig. Accused)

VERSUS

1. The State of Maharashtra.
2. The Police Inspector,
Azad Nagar Police Station,
Dhule, Dist. Dhule.
3. Riyaz Asaraf Sharif,
Age: 38 years, Occ : Business,
R/o. Plot No.441/2, Near Bushara Hotel,
Garib Navaj Nagar, Dhule.

... RESPONDENTS

...
Mr. Vikram R. Dhorde, Advocate for Petitioner.
Mr. R. V. Dasalkar, APP for Respondent Nos.1 & 2.
Mr. V. P. Latange, Advocate for Respondent No.3.
...

CORAM : **T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 26th October, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. The proceeding is filed for relief of quashing of C.R. No.5 of 2015, registered with Azad Nagar Police Station, District Dhule for the offences punishable under Sections 406 and 420 of the Indian Penal Code.

2 Both the sides are heard.

3 The crime is registered on the basis of report given by Respondent No.2. He has contended that on 14th October, 2014 in the noon time, in his shop, present Petitioner and one Vijaykumar had met him and they had represented that Vijaykumar was director of Jyanti Agro Foods Private Limited Mumbai and present Petitioner was area sales manager of the said company. It is contended that they had represented that they were manufacturing wheat flour and they were selling it under name "Makhan Gold Aata" and they wanted to appoint the first informant as distributor for Dhule, Nashik, Jalgaon and Nandurbar. They had obtained from him application in their format and they had taken from him a cheque of Rs.51,000/- as

security deposit for getting appointment as distributor. They had informed that the customers like Dharma Provision Center, Amalner, Rodilal Chaganlal Agarwal, Pachora and N. K. Traders, Malegaon were their regular customers and the first informant will be required to supply goods to them.

4 It is the case of first informant that on the basis of aforesaid representation, he accepted the distributorship and he gave order of 20 ton for aforesaid Aata to Jyanti Agro Foods. It is contended that he was asked to deposit amount of Rs.4,30,000/- in the account of Jyanti Group from a Federal Bank, Ghatkopar and accordingly, he transferred that amount by RTGS mode. Number of the account is given in the FIR. It is contended that there was a delivery of 19,950 kilograms as against the aforesaid order and so, some wheat was not delivered. It is contended that on that occasion, there was one more representation that per bag, the price was reduced by the company by Rs.30/- and on that count also, he is entitled to get back some money. It is contended that as per the aforesaid representation, he sent bags of wheat to the aforesaid persons, but the aforesaid persons from Amalner, Jalgaon and

Malegaon refused to accept the bags by saying that the wheat flour was not of expected quality. The first informant somehow disposed of that wheat.

5 It is the case of first informant that he placed order of another 20 ton of wheat flour on 1st November, 2014 and as per the direction given by Vijaykumar, he transferred the amount of Rs.3,18,500/- by RTGS mode in the account of federal bank of which number was given by Vijaykumar. Numbers of Vijaykumar and present Petitioner were also given to the first informant. It is contended that promise was given to send the goods within 4 to 5 days of the payment of amount, but the goods were not sent and then he made inquiry about the office of aforesaid company in Mumbai. According to him, there was no office of the company at the address given. According to him, when he contacted Vijaykumar, Vijaykumar asked him to send resignation letter by courier and speed post and promised to return the amount after receipt of the resignation letter. It is contention of the first informant that he sent resignation letter and it was collected by Vijaykumar from courier service, but he did not return the aforesaid amount. According to him, last amount of

Rs.3,18,500/- and previous amount was due from the company and total amount of Rs.4,84,409/- was due to him. It is contended that the amount is not returned and thereby he is deceived.

6 The submissions made show that Vijaykumar is not traceable and there is no such company by name "Jyanti Agro Foods Private Limited" in existence. There is record to show that the present Petitioner was appointed as sales manager of this area. The learned counsel for Petitioner submitted that the Petitioner himself is deceived and no payment of salary was made to him though he was appointed as representative of the aforesaid company for this area. It is submitted that the amount was not given to the Petitioner and so he cannot be prosecuted. The learned counsel for Petitioner placed reliance on the observations made by the Apex Court in the following two cases:

- a) **AIR 2000 Supreme Court 2341** (Hridaya Ranjan Pd. Verma and others Vs. State of Bihar and another);
- b) **(2007) 12 Supreme Court Cases 1** (Inder Mohan Goswami and another Vs. State of Uttaranchal and

others).

7 The facts and circumstances of each and every case are always different. Admittedly, the Petitioner was not known to the first informant and only due to aforesaid Jyanti Group Company, he came in contact with the first informant. Representation was made that he was working as area sales manager for this company and it needs to be inferred that he was in touch of the distributors for the company. In view of these circumstances, it cannot be said that the present Petitioner had no knowledge about the non-existence of the said company and also possibility of fraud. As he worked as a part of the racket and said Vijaykumar is not available now, it cannot be said that the Petitioner has not committed any offence. There is record of aforesaid nature like his appointment as area sales manager and there will be oral evidence of aforesaid nature against him. In the result, the following order is passed:

ORDER

- I. The petition stands dismissed.
- II. Interim relief is vacated.

III. Rule is discharged.

IV. Request made by the learned counsel for Petitioner to continue the interim relief for some time, is refused.

ndm

[SMT. VIBHA KANKANWADI, J.]

[T. V. NALAWADE, J.]