

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No.3047 of 2014

- 1) Niraj Devidas Patil,
Age 44 years,
Occupation : Business
R/o B-1, Gulmohar Row House,
Near Sadanand Hotel,
Behind Career Forum Bldg.,
Baner Road, Pune - 45.
- 2) Meghna Niraj Patil,
Occupation : Business,
R/o B-1, Gulmohar Row House,
Near Sadanand Hotel,
Behind Career Forum Bldg.,
Baner Road, Pune - 45. .. **Applicants.**

Versus

- 1) The State of Maharashtra.
- 2) Mehul Vinod Trivedi,
Age 30 years,
Occupation: Business,
R/o Natwar Complex,
M.G. Road, Jalgaon. .. **Respondents.**

Shri. Amol K. Gawali, Advocate, for applicants.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for
respondent No.1.

Shri. A.M. Gholap, Advocate, for respondent No.2.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Judgment reserved on : 03 August 2018

Judgment pronounced on : 21 August 2018

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

1) The proceeding is filed under section 482 of the Code of Criminal Procedure for the relief of quashing of charge-sheet No.34/2013 filed before the learned Judicial Magistrate, First Class, Jalgaon which is given number as R.C.C. No.423/2013. The case is filed after making investigation on the basis of the order made under section 156(3) of the Code of Criminal Procedure in a private complaint filed by present respondent No.2. The case is filed for offence punishable under section 420 read with 34 of the Indian Penal Code. As the charge-sheet is filed, papers of investigation were available for perusal. The applicants have also produced some documents in respect of their contentions which they want to make in defence to the case. Both the sides are heard.

2) The applicant No.1 is the sole proprietor of one concern by name M/s Overseas Electronics Pune. Applicant No.2 is the wife of applicant No.1 and she is an Architect. The concern of applicant No.1 is in the business of acoustic designing and audio-video solution. The complainant is a registered private firm and the complainant wanted to open a multiplex theatre of three screens in Jalgaon. The complainant was in search of expert in the development of multiplex including the interior designing. It is the case of the complainant that both the accused, present applicants, approached the complainant at Jalgaon and represented that the applicants were in that business and they would do the work as per the expectations and satisfaction of the complainant. It is contended that quotations were supplied by the applicants and on that basis there were talks of negotiations. It is contended that the applicant No.1 had promised to supply high quality branded items which were mentioned in the quotation. It is the contention of the complainant that representation was made by the applicants/accused that some advance needs to be given to them as all the material including audio-

video equipments were required to be ordered well in advance and only after that the manufacturer gives the delivery and that too after 40 days from the date of placing of the order.

3) It is the contention of the complainant that due to aforesaid representation made by the applicants, amount of Rupees one crore was given on 28-10-2010 and the total consideration agreed was Rs.2,35,26,563/-. The agreement shows that the value of the work was fixed and was not to be changed and this was the final consideration. The work was to be executed within time fixed in the agreement. It is contended that by making various representations, the remaining amount of consideration was collected from the complainant by the applicants in the name of advance and till 20-7-2011 total amount collected from complainant was Rs.2,33,34,165/-. It is contended that though more than 99% amount of consideration was collected by the applicants, at no time interest was shown to complete the work in given time and ultimately the work was abandoned by the accused-applicants.

4) It is the case of the complainant that the material supplied by the applicants was not as per the quality and it was of low quality. It is contended that the complainant made many written communications to request the applicant No.1 to resume the work but the accused avoided to do so. It is contended that the complainant was required to pay interest on the loan taken from bank and so the complainant took steps like getting valuation done of the work executed by the applicants/accused through different architects. It is contended that when it was realised that the work executed was not of the amount collected and the value was much less, the complainant made written communication on 31-10-2011 and asked the accused either to complete the work or to return the amount taken in the name of advance. It is contended that no response was given to the written communication dated 31-10-2011 and so legal notice was issued to the accused on 28-12-2011. It is contended that the notice dated 28-12-2011 was not collected by the accused persons and then the complainant realised that the accused had the intention to deceive right from the beginning.

5) The submissions made and the record show that the complainant invoked the arbitration clause and gave another notice. This notice dated 10-4-2012 was accepted by the accused persons and it was replied also. In the reply the accused contended that on 28-12-2011 they were not at the place of which address was supplied by them and for some time they had shifted the place of business.

6) It appears that after the date of the written agreement i.e. on 1-7-2011 a cheque of Rs. twenty five lakh was already taken by the accused and when it was presented for encashment it bounced. A case for offence punishable under section 138 of the Negotiable Instruments Act was then filed by present applicants against the complainant and that was done on 27-12-2011. It is the case of the complainant that the complainant paid the cheque amount in two installments on 20-8-2011 and 7-9-2011.

7) The accused denied that the aforesaid cheque amount was paid by the complainant. The accused have,

however, admitted that the amount of Rs.2.08 crores was collected by them but they have contended that the work of the valuation of Rs.2.16 crores was executed by them.

8) The material collected by police shows that the work of three screens multiplex theatre was incomplete on the date of registration of the crime. Admittedly after that also the work was not resumed. The record in respect of payment of Rs.2.33 crores made by the complainant to the accused was produced before police. The record regarding report of another Architect of the valuation of the work done, is collected by police and it shows that the work of the valuation of Rs.34.18 lakh was completed. This does not include the valuation of the audio-video equipments as they were not supplied.

9) The applicants, accused are relying on a decision given by the Arbitrator. The decision however shows that the Arbitrator had given direction to the applicants to return the amount of Rs.34.95 lakh to the complainant. The submissions made show that the proceeding is filed to challenge the award of the Arbitrator by the accused persons but no stay is claimed

in that proceeding and the amount which is to be returned is not deposited in the Court and it is not returned. The proceeding even if it is considered by the District Court, it will be considered under the provisions of the amended Act and so in ordinary course the award will be treated as money decree given under Civil Procedure Code.

10) It was submitted for the applicants-accused that the dispute is of civil nature and there is a decision of the Arbitrator and so Criminal Court ought not to have taken cognizance of the offence. The submissions made for the complainant are to the effect that the applicants are using peculiar *modus operandi* that by collecting the amount of consideration in advance for the work they are deceiving the persons like the complainant. It was submitted that three similar cases were filed against the present applicants by others and similar allegations are made against the applicants in those cases.

11) Learned counsel for the applicants placed reliance on the observations made in the following three cases :

- (i) **AIR 2009 SC (Supp) 59 (V.Y. Jose v. State of Gujarat);**
- (ii) **AIR 2008 SC 247 (All Cargo Movers (I) Pvt. Ltd. v. Dinesh Badarmal Jain); and,**
- (iii) **(2005) 10 SCC 228 (Anil Mahajan v. Bhor Industries Ltd.)**

In these cases the Apex Court has laid down that when the dispute is of civil nature or the dispute involved of breach of contract, it is not desirable for the criminal court to take cognizance of the matter. There cannot be dispute over the propositions but facts and circumstances of each and every case are always different and in criminal cases the Court is required to consider all the relevant facts of the matter.

12) The learned counsel for the complainant placed reliance on the observations made in the cases (1) **AIR 2010 SC (Supp) 307 N. Radhakrishnan v. M/s Maestro Engineers);** and, (2) **AIR 2014 SC 3723 (Swiss Timing Limited v. Organising Committee, Commonwealth Games 2010).** Though those cases are apparently on different point, like the powers of the Arbitrator to go on with the arbitration matter when crime is registered, the Apex

Court has laid down that when there are allegations of serious nature like involving fraud, it is always desirable that regular court to deal with such matters. There cannot be dispute over this proposition also.

13) In the present matter the agreement is not disputed and it is the contention of the complainant that right from beginning there was intention to deceive and the accused are using peculiar *modus operandi* like taking entire consideration amount in the name of advance and then abandoning the work. There is also allegation that the material of the quality agreed is not supplied and that way also the complainant is deceived. When there are circumstances like taking of the entire amount in advance, abandoning the work, the reason behind it can be ascertained only on the basis of evidence. The circumstances like not returning the amount which is in excess of the work executed, can be considered by the criminal court at the time of taking cognizance of the offence. The circumstances that in similar cases cognizance was taken of the offence against the accused also can be considered by criminal court. In view of these

circumstances this Court holds that at this stage it cannot be said that there is no material at all to make out prima facie case. The investigating agency is satisfied that the material which is collected to some extent is sufficient to file charge-sheet and this circumstance also cannot be ignored by this Court. This Court holds that no relief can be granted to the applicants. In the result, the proceeding stands dismissed. Rule is discharged. Interim relief is vacated.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

rs1