

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1620 OF 2017

- 1) Rajkanwarsingh Sevasingh Soki,
Age 57 years, Occupation Business,
Residing at Flat No.62, Rutu
Enclave Ghodbunder Road,
Thane (West).
- 2) Ganesh Haribhau Wankhede,
Age 39 years, Occupation Service,
C/o. Ravindra Shrawan Ghate,
Residing at Gajanan Maharaj
Society, Gat No. 102, Savant
Nagar, Bhosari, Pune. .. Petitioners.

VS.

- 1) The State of Maharashtra,
(At the instance of Sr. Inspector
of Police, M.I.D.C., Waluj
Aurangabad City Police Station,
District Aurangabad.
- 2) Laxman Rabhaji Darkunde,
Age 55 years, occupation Business,
R/o. Plot No.35, Dnyaneshwarnagar,
In Front of Vibhagiya Krida Sankul,
Garkheda Parisar, Aurangabad. .. Respondents

Mr. Mobin H. Shaikh, Advocate for petitioners.
Mr. S. W. Munde, Additional Public Prosecutor for
respondent No. 1 / State.

**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI, JJ.**
DATE : 14-03-2018

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. Rule. Rule made returnable forthwith with the consent of learned counsels for the parties, the petition is heard finally.

2. By invoking powers of this Court under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, the applicants have prayed for quashment of the First Information Report (hereinafter referred as 'FIR') bearing Crime No. 242 of 2017 registered with M.I.D.C. Waluj, Aurangabad City Police Station, for the offence punishable under Section 406 read with 34 of the Indian Penal Code.

3. The petitioners have come with a case that, petitioner No.1 is owner of a company by name M/s. Arnav Castings and Engineers, having its factory at Pune and petitioner No.2 is working as a Manager with petitioner No.1. The company is engaged in the business of manufacturing Sand Cores for Aluminum Castings. Respondent No.2 has filed FIR with M.I.D.C. Waluj Aurangabad City Police Station alleging that, his wife Sou. Sunanda Laxman Darkunde is running a company by name Jay Industries at Plot No. M 47/01, MIDC Waluj, Aurangabad. The informant has stated that, he is looking after the affairs of the industry. His company is producing Resin Coated Sand and Sand Core. The company started selling resin quoted Sand to Raj Singh, owner of Arnav Castings and Engineers, Chakan, Pune since January 2014. As the said company

was supplying its material to renowned company Endurance Group, the respondent believed in the said company. The company initially made regular payments but after some days started making the payments after due dates. Persistently, he was required to make phone calls which resulted in part payments. However thereafter there was refusal and also threatening in abusive language. It was told to him that, if he would come to Pune for payments then he would be killed. The amount of Rs.7,63,609/- was due and payable from 2014 to 2015 from the said company owned by Raj Singh. A mail was sent send by Raj Singh that he will settle the payment in the month of January 2015 but again avoided to receive phone calls. Informant went to Pune for the recovery of the said amount, however Mr. Wankhede, the Manager of Arnav Castings and Engineers used abusive language and with the help of goondas informant was made to run away from the factory. The informant therefore says that, he has been deceived. He tried to take action against the accused persons but there was no response. However, then he filed a complaint application on 08-02-2017 wherein permission was sought from higher officers. On the basis of the permission, his report has been taken and offence has been registered.

4. The petitioner have contended that, it is very much clear from the contents of the report that, there was transaction between

both the companies and it was of purely civil nature. It has been stated that, in order to pressurize the petitioners to make the payments, the report has been lodged, and therefore, they have prayed for quashing and setting it aside.

5. Respondent No.1- State has resisted the application on the ground that the contents of the FIR disclose commission of the offence.

6. Respondent No.2 – original informant was duly served but he has not appeared in the matter.

7. It has been submitted on behalf of the petitioners that, when the transaction was of purely civil nature, there was no question of invoking Section 406 of the Indian Penal Code. He relied on the decision in *Binod s/o Ratan Sarkar & Ors. Vs. The State of Maharashtra & Anr., (2014) 10 Supreme Court Cases 663*. The question before the Hon'ble Supreme Court was whether the charges under Section 406 of the Indian Penal Code and the criminal complaint for criminal breach of trust for allegedly retaining the bill amount payable to respondent No.2 is liable to be quashed and the answer was given in the negative. Similar view was also taken in *Sunil Kumar Vs. M/s. Escorts Yamaha Motors Ltd. And Others, 2000 All MR (Cri) 134*, and in *V. Selvapoathy Pv. Venkataswamy Naidu Versus State of Maharashtra and others, Criminal Writ*

Petition No. 584 of 2008 with connected matter, decided by this Court on 19-12-2012. It has been stated that the facts of the last case are similar to the present case and it has been observed by this Court that,

"10. We have noticed that even if each and every word and statement contained in the first information report as well as chargesheet and statements of the witnesses as recorded by the Investigating Officer are accepted to be true without further evidence, and on that basis the offence of breach of trust is registered, yet cheating, etc. is not disclosed."

"11. As we have noticed, the grievance of the petitioners falls squarely within the description of the term "breach of promise to make the payment" in terms of the stipulations i.e. breach of contract and nothing beyond that."

"12. There is no element of breach of trust involved, seen from any angle. Therefore, continuation of trial any further, would be sheerly abuse of process of law, apart from the fact that the accused persons will be vexed at law, which exercise is certainly avoidable."

8. We agree with the submission on behalf of the petitioner. In order to attract provisions of Section 406 of the Indian Penal Code, we will have to consider Section 405 of the Indian Penal Code. Following observations in Binod Kumar's case (Supra) are in order to consider the ingredients of the offence.

"15. Section 405 IPC deals with criminal breach of trust.

A careful reading of the Section 405 IPC shows that a criminal breach of trust involves the following ingredients:

- (a) a person should have been entrusted with property, or entrusted with dominion over property;*
- (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so;*
- (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."*

"16. Section 406 IPC prescribes punishment for criminal breach of trust as defined in Section 405 IPC. For the offence punishable under Section 406 IPC, prosecution must prove:

- (i) that the accused was entrusted with property or with dominion over it; and*
- (ii) that he (a) misappropriated it, or (b) converted it to his own use, or (c) used it, or (d) disposed of it.*

The gist of the offence is misappropriation done in a dishonest manner. There are two distinct parts of the said offence. The first involves the fact of entrustment, wherein an obligation arises in relation to the property over which dominion or control is acquired. The second part deals with misappropriation which should be contrary to the terms of the obligation which is created."

It has been further observed that,

"18.To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust."

9. If we considered the above contents of the FIR lodged by respondent No.2, it is very much clear that, it was a civil dispute and at the most even if the facts mentioned therein are accepted as true, that will amount to "Breach of Promise to make the payment". The observations of this Court in V. Selvapoathy's case (Supra) are applicable here, and therefore, we are satisfied that this is a fit case where the FIR deserves to be quashed and set aside. We cannot allow the petitioners to face the trial when the ingredients of the offence has not been made out on the face of the FIR. We, therefore, make rule absolute in terms of prayer Clause "A".

ORDER

- 1) Petition is hereby allowed.
- 2) Rule is made absolute in terms of prayer Clause-'A'.

(SMT. VIBHA KANKANWADI)
JUDGE

(PRASANNA B. VARALE)
JUDGE

vjg/-.