

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.516 OF 2017

Girish Shivaji Ingalagi and Ors.Applicants
V/s.
The State of Maharashtra & Anr.Respondents

Mr. K.U.Nikam, Advocate for Applicants.
Mrs. A.S.Pai, APP for the Respondent-State.
Mr. A.M.Adagule, Advocate for Respondent No.2.

**CORAM :- R.M.SAVANT &
SANDEEP K. SHINDE, JJ.**

DATE :- 23RD JANUARY, 2018.

PC. :-

At the outset, the learned counsel for the Applicants seeks leave to amend so as to incorporate prayer for quashing of the charge-sheet by way of prayer clause (aa). Leave granted. Amendment to be carried out forthwith.

2 **Admit.** Taken up for hearing forthwith.

3 The above Criminal Application has been filed for quashing of the proceedings being No.42 of 2017 arising out of FIR being No.47 of 2017 dated 15.3.2017 registered with Ichalkaranji Police Station, Kolhapur for the offences punishable under Sections

417, 420, 367, 464, 465, 468 read with Section 34 of the IPC. The said FIR is consequence of the transaction between the Applicants and the First Informant in so far as the purchase of solar water heater by the First Informant is concerned. The gravamen of the allegations in the FIR is that the heating capacity of the said water heater was not that which was represented by the accused i.e. the Applicants herein to the First Informant, i.e., the Respondent No.2. It appears that the Respondent No.2 herein had filed Criminal Application being No.86 of 2017 invoking Section 156(3) of the Cr.P.C. for directions to be issued for registering FIR. The learned J.M.F.C., Ichalkaranji by order dated 14.3.2017 directed the Ichalkaranji Police Station to enquire into and lodge FIR. The Ichalkaranji Police accordingly after carrying out necessary enquiry registered the FIR being C.R.No.47 of 2017 against the Applicants for the offences punishable under relevant Sections which have been referred to in the earlier part of this Application. Quashing of the FIR and now the charge-sheet bearing No.42 of 2017 is sought inter-alia on the grounds mentioned in the above Application. We have with the assistance of the learned counsel for the parties and the learned APP, perused the FIR and the allegations contained therein as also the charge-sheet and the material which has been uncovered

by the Police during the course of the investigation. The said material discloses that two statements have been recorded in support of the case of the Respondent No.2 herein, i.e., the statement of the Complainant himself and the statement of one Vimal Kumar Bumb supportive of the case of the Complainant. It is required to be noted that the Respondent No.2, i.e., the Complainant has already filed a consumer dispute before the District Consumer Forum, Kolhapur alleging deficiency in services in so far as the solar heater supplied to him by the Applicants is concerned. In our view, allegations as contained in the FIR can hardly be said to constitute the ingredients for the offences alleged against the Applicants. This, in our view, is a case where at the highest there may be deficiency of service which aspect can obviously be gone into by the consumer forum but it is not a case where the Applicants are to be prosecuted for the offences under the provisions which are adverted to in the earlier part of this order. FIR and the subsequent proceedings initiated would only amount to abuse of the process of this Court which requires interference of this Court under Section 482 of the Cr.P.C. In that view of the matter, the Application is

required to be allowed and the same is accordingly allowed and made absolute in terms of prayer clauses (a) and (aa).

(SANDEEP K. SHINDE, J.)

(R.M.SAVANT, J.)