

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1712 OF 2011

Shri Rodsing Pruthvising Chandana & Anr.] ... Petitioners

Versus

The State of Maharashtra & Anr.] ... Respondents

Mr. Vikas Shivarkar for Petitioners.

Smt. A. S. Pai, APP for State - Respondent No.1.

Mr. R. A. Naik i/b Mr. Umesh R. Mankapure for Respondent No.2.

CORAM :- B. P. DHARMADHIKARI &
SARANG V. KOTWAL, JJ.
DATE :- DECEMBER 03, 2018

P. C. :-

1. Heard the respective Counsel finally.

2. Learned Counsel for Petitioners submits that bare perusal of complaint shows that it is essentially a civil dispute which has been camouflaged as a criminal one. He contends that other allegations made to show the offences allegedly under Sections 452 and 506(1) of the IPC are by way of afterthought and false.

3. He points out that the relationship between the parties as wholesaler and retailer was going very well and payments have been made from time to time. After the business went into losses, the present Petitioners could not effect timely repayment but they had assured to clear the dues. It is therefore a civil dispute and ingredients under Sections 406, 417, 420 or 420 of the IPC are not made out.

4. Learned Counsel appearing for the complainant submits that the complaint, as filed, is to be viewed in its entirety and the conduct itself reveals a design first to secure confidence and then to exploit it to cause loss to the complainant. He invites our attention to the pleadings in paragraph 4 and other paragraphs for this purpose. He adds that had the Petitioners intended to repay, the subsequent offences punishable under Sections 452 and 506(1) would not have occurred.

5. He invites our attention to the order dated 23/03/201 passed by the learned Chief Judicial Magistrate of Sangli directing the P.S.O. of Vishrambag Police Station to make investigation and file charge-sheet.

6. Learned APP submits that at this stage, the defence cannot be examined.

7. We find that it is the subsequent conduct which led to registration of offence punishable under Sections 452 and 506(1) of the IPC which is material in the present matter. This conduct essentially eclipses the earlier narration. Had the Petitioners shown *bonafides* and expressed readiness and willingness to clear the dues, they would not have indulged into the other incriminating conducts.

8. In this jurisdiction, we cannot accept the defence put up by the Petitioners and cannot discard the narration of the Respondent No.2.

9. We, therefore, dismiss the present petition. However, it is clarified that discussion above in the present matter is only for the purpose of examining jurisdiction under Section 482 of the Cr.P.C. and shall not, in any way, prejudice the contentions and defences available to the parties during trial.

10. The Writ Petition is accordingly dismissed. No costs.

(SARANG V. KOTWAL, J.)

(B. P. DHARMADHIKARI, J.)