

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.262 OF 2014

Pankaj Bhogilal Shah

Applicant

versus

The State of Maharashtra and others

Respondents

Mr.Sathyanarayanan with Mr.Pratik Surti for applicant.

Mr.Mihir D. Gheewala for respondent nos.2 and 3.

Ms.R.M.Gadhvi, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st February 2018

PC :

1. The applicant has challenged the order dated 9th May 2014 passed by learned Additional Sessions Judge, Mumbai in Criminal Revision Application No.245 of 2012.

2. The applicant is the original complainant in Criminal Case No.210/SW/2011. The complaint was filed on 5th July 2011 against respondent nos.2 and 3 in the Court of Metropolitan Magistrate, 10th Court, at Andheri, Mumbai for offence u/s 420 r/w Section 34 of Indian Penal Code. The Trial Court after recording verification statement, issued process against the accused on 4th November 2011.

3. The complainant's case is that he had not received brokerage/ commission in respect of an act or services rendered by him for which he was engaged by the accused. The respondent nos.2 and 3 were desirous of selling the property owned by them through the complainant. They also represented that on sale of the property, they shall pay the complainant a sum of Rs.5,00,000/- as brokerage.

Although the complainant rendered his services in the year 2000, the commission was not paid to him. In stead of making the payment, the complainant was threatened of dire consequences.

4. The respondent nos.2 and 3 preferred revision application before the Sessions Court challenging the order of process. The learned Sessions Judge vide judgment and order dated 9th May 2014 allowed the said application and the order issuing process was quashed and set aside.

5. Learned Sessions Judge while allowing the said application had observed that the complaint was barred by law of limitation in accordance with Section 468 of Code of Criminal Procedure, 1973, as the act would at the most be covered by Section 417 of Indian Penal Code and the complaint was filed beyond the period of limitation. It was also observed that there is no element of cheating and the dispute is purely of civil nature. It is also observed that the accused no.2 has been unnecessarily dragged in the case.

6. Learned advocate for the applicant submits that the Sessions Court has committed an error in allowing the revision application filed by the respondents. It is submitted that the complaint was within limitation and the Sessions Court ought not to have dismissed the same on the ground that it is barred by law of limitation. It is submitted that the act attributed to the respondent-accused will be covered by Section 420 of Indian Penal Code and, therefore, the Sessions Court has committed an error in arriving at a conclusion that the complaint would at the most attract Section 417 IPC and the same was filed beyond limitation. It is submitted that the delay has

been explained in the complaint. Since Section 420 is applicable in the case, the limitation as observed by Court will not be attracted. It is further submitted that the accused had induced the complainant to render services and by not fulfilling the promise, they have committed an offence which amounts to cheating. It is further submitted that all the ingredients to constitute an offence u/s 420 were made out and it cannot be said that the dispute was of civil nature. At the stage of issuance of process the Trial Court is required to see whether prima facie case is made out for issuance of process. The Revisional Court had limited scope in dealing with the issue. The Trial Court had dealt with the complaint, averments made in the complaint and the verification statement and thereafter issued the process. It is submitted that the Sessions Court ought to have appreciated that the legislature has not defined the term “property” in IPC. The term “property” have not been specifically defined, no element of restriction could have placed on it and the term “property” contemplated u/s 415 of Indian Penal Code, would include things in action and intangible property. The applicant/complainant had rendered his services as a *quid pro quo* for consideration. This by itself would fall u/s 420 of IPC and not u/s 417 of IPC. Thus, it is submitted that the Sessions Court has committed an error in passing the impugned order.

7. Learned counsel for the respondent submitted that reading the complaint as it is, it does not make out any offence. The complaint neither makes out an offence punishable u/s 420 nor the offence u/s 417 of IPC. It is submitted that the complaint was filed belatedly. The alleged transaction was of 13th February 2000 whereas the complaint was filed on 5th July 2011. There was no explanation for

inordinate delay in filing the complaint. It is submitted that the dispute is purely of civil nature. If the complainant was aggrieved by non payment of commission, he could have been diligent in pursuing the complaint and could have been waited for such a long time. It is submitted that by no stretch of imagination the act would be covered by Section 420 of IPC and the Sessions Court has rightly passed the order allowing the revision application on the ground that the complaint was barred by law of limitation. It is also submitted that the alleged dispute is in relation to payment of commission, which was supposed to be paid to the complainant, which is not supported by any document. Therefore, there is no element of cheating in the entire transaction. It is, therefore, submitted that the revision application is devoid of merits and the same may be dismissed.

8. I have perused the documents on record. The case of the complainant is that on 13th February 2000 the accused had approached him at his residence and represented that he intend to sell the premises. It is further alleged that in the event of sale of premises, the accused would pay Rs.5,00,000/- as brokerage. Relying on the representations and assurances, the complainant agreed to act as a estate agent in connection with the said transaction. The accused were introduced to the purchaser and the transaction was finalized. However, the brokerage, as promised, was not paid to the complainant. Except oral assertion of the complainant, there is nothing on record to substantiate the said allegation. Admittedly the complaint was filed belatedly in the year 2011. I do not find any infirmity in the reasons assigned by learned Sessions Court in arriving at the conclusion while allowing the revision application. There is no element of cheating in the entire

transaction. There is no document to corroborate the grievance of the complainant. The transaction relates to the payment of alleged commission which was promised in the year 2000. The difference between Section 417 and Section 420 is that where in pursuance of the deception, no property passes, the offence is one of cheating punishable under Section 417, but where, in pursuance of the deception, property is delivered, the offence is punishable u/s 420 IPC. In view of the above, I do not find any infirmity in the order of Sessions Court, setting aside the order on ground of limitation. Apart from that, there is no element of cheating in the alleged transaction. The ingredients of cheating have to be borne out from very inception. The respondent no.2 has not played any role. The dispute is purely of civil nature. Reading Sections 415, 417 and 420, it is apparent that the alleged act would fall within perview of Section 417 of IPC. The service rendered by complainant cannot be said to be property. There is no document supporting alleged transaction. The Trial Court, however, has referred agreement between the parties while issuing process. In the circumstances, no case is made out to interfere in the order of Sessions Court. I find that the revision application is devoid of merits and the same is liable to be rejected. Hence, I pass following order :

ORDER

- (i) Criminal Revision Application No.262 of 2014 is rejected;
- (ii) No order as to costs.

(PRAKASH D. NAIK, J.)