IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2820 OF 2016

T. Das .. Petitioner
Versus
The State of Maharashtra & Anr .. Respondents

…

Mr. Atif Noorhasan Shaikh for the petitioner.
Mr.Jagdish Shukla i/b Singh Diwakar Ramashray for respondent no.2.
Mrs.A.S.Pai, APP for the State.

CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.
DATED : 26th SEPTEMBER, 2018

JUDGMENT :- (Per SMT.BHARATI H. DANGRE,J)

1 The present Writ Petition seeks a relief of Quashment of FIR No.5 of 2013 filed with Oshiwara Police Station against the petitioner for the offences punishable under Sections 120B, 406, 419, 420, 421, 422, 424, 465, 468, 471, 506 r/w Section 34 of the IPC. The contention of the petitioner is that the entire claim of the complainant on the basis of which the petitioner has been implicated as an accused is entirely of a civil nature and do not involve any criminality. The submission

of the petitioner is that even after if the complaint is read as it is, it does not disclose any genuine or de-laboured dimension of criminal liability and the complainant is essentially seeking redressal of her financial or commercial claim arising out of the agreement executed between the parties.

With the assistance of the learned counsel for the petitioner, Advocate Shri Atif Shaikh, we have carefully perused the FIR. The informant Niarvasha Jithu, who is a resident of United Kingdom has lodged a complaint with the Oshiwara Police Station alleging that she is resident of United Kingdom and in the year 2005, she came in contact with one Romesh N. Grover, the Producer of Metro Movies Film and she was offered a role in the film and she was instigated to invest an amount into the film industry through various Directors. The complaint proceeds to set out the narration of her involvement into several agreements with several Producers and reference is made to one Faisal Saif with whom the Informant came into contact for production of a Hindi Film where the complainant invested 10,000 pounds. The complainant further states that through Faisal Saif, she was introduced to Director Aushim

Khetrapal, Dhinu Das and his wife Ekta Das and it is alleged that the said Dhinu Das, Ekta Das and Shri T. Das i.e. the present petitioner, carry out their activity in the name of “Das Entertainment Co.Pvt.Ltd”. The complainant has further stated that the trio of the aforesaid persons gave an impression to the complainant that they were well known producers and associated with the super stars of Bollywood and by giving false assurances, she was made to invest an amount of 36,466 Pounds for Production of a movie titled as “Main Osama”. It is the specific case of the complainant that an agreement was executed between the complainant and Das Entertainment Co.Pvt.Ltd on 30th December 2009 and in the said agreement, she was assured a share of 45% in the rights of Production, Distribution by retaining 55% to Das Entertainment Co.Pvt.Ltd. It was agreed that the film will be completed before 30th May 2010 and if not, then the amount invested by the complainant of 36,466 pounds along with the ancillary benefits were promised to be returned with an interest @ 7.02%. The complaint also refers to another agreement executed to that effect on 30th December 2009.

2 It is the case of the complainant, as set out in the complaint that in August 2007, the picturisation of the film commenced and some scenes in the film were picturised at Patni Top – Jammu & Kashmir, Ramoji Film City – Hyderabad etc. which was attended by the complainant. In October 2009, the complainant was informed by Faisal Saif that 50% of the film was complete. However, in January 2010, when Shri Dhinu Das met the complainant, he informed that 85% of the film was complete. She was also informed that the budget of the film has increased and therefore, a demand of 35,000 pounds was made to the complainant and she expressed her inability to arrange for the same. The complainant raised a dispute for return of her amount, but when there was no cognizance being taken of her complaint, she filed the complaint, where she alleged that she was duped to the extent of an amount of Rs.Two crore. She approached the Magistrate with the said complaint who passed an order under Section 156(3) of the Code of Criminal Procedure pursuant to which an offence came to be registered with the Oshiwara Police Station

vide C.R.No.05 of 2013 which is sought to be quashed in the present proceedings.

3 Perusal of the complaint would clearly reveal that the complainant had entered into multiple agreements with the Producers at different point of time and in December 2009, she had entered into an agreement with Das Entertainment Co.Pvt.Ltd and it was a partnership agreement for production of a film "Main Osama" where it was agreed that she would be the partner to the extent of 45% for the production, distribution, sale of CDs and other rights in the said film. Perusal of the complaint would clearly reveal, that the dispute between the parties is predominantly civil in nature and there is no element of any criminal liability made out in the application. The complainant had executed an agreement and through the said complaint, what she is seeking is enforcement of the said agreement. The offence registered against the present petitioner is for cheating by invoking Sections 406, 419, 420, 421, 422, 424 so also Sections of forgery are also invoked and applied.

The charge of Section 420 which pertains to cheating and dishonest inducement of the person deceived which is punishable with Imprisonment for description for a term which may extend to 7 years and also liable for fine, implicitly requires a dishonest intention which is *sine qua non* to hold the accused guilty for commission of the said offence. We have read the FIR and perused the allegations therein and even if accepting the same as true and correct, no offence of cheating can be made out from reading of the entire complaint. The complainant in order to prove an offence of cheating is required to demonstrate that the accused had a fraudulent or dishonest intention at the time of making a promise or representation. Even in a case where allegations are made in regard to failure on part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 can be said to have been made out.

4 The Hon'ble Apex Court in the case of ***Indian Oil Corporation Vs. NEPC Ltd & ors***[1] have laid down the ingredients of the offence of cheating in the following words :

> "The essential ingredients of the offence of "cheating" are (i) deception of a person either by making a false or misleading representation or by other action or omission (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.
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> The High Court has held that mere breach of contractual terms would not amount to cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and in the absence of an allegation that the accused had a fraudulent or dishonest intention while making a promise, there is no "cheating". The High Court has relied on several decisions of this Court wherein this Court has held that dishonest intent at the time of making the promise/ inducement is necessary, in addition to the subsequent failure to fulfill the promise. Illustrations (f) and (g) to Section 415 make this position clear :
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> (f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.
>
> (g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant

1 (2006) 6 SCC 736

which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats: but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract".

The Hon'ble Apex court in case of ***V.Y. Jose Vs. State of Gujarat & Anr***[2], has observed thus :

"We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Penal Code is existence of an (sic fraudulent or dishonest) intention of making initial promise or existence thereof from the very beginning of formation of contract.

5 It would be further appropriate to reproduce the observations of their Lordships in ***Hira Lal Hari Lal Bhagwati Vs. CBI***[3]

"40. It is settled law, by a catena of decisions, that for establishing the offence of chearing, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning, that is, at the time when the promise was made cannot be presumed. It is seen from the records that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it, therefore, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers right at the time of making application for exemption. As there was

2 (2009) 3 SCC 78
3 (2003) 5 SCC 257

> *absence of dishonest and fraudulent intention, the question of committing offence under Section 420 of the Penal Code does not arise. We have read the charge-sheet as a whole. There is no allegation in the first information report or the charge-sheet indicating expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellants right from the time of making the promise or misrepresentation"*

6 Perusal of the aforesaid judgments by which the position of law has now been crystallized would conclusively lead to a conclusion that it is the intention of the person who induces the victim on his representation and not the nature of the transaction which is decisive in concluding whether there was commission of an offence or not. Perusal of the complaint filed by the complainant would clearly reveal that an agreement was entered into between the parties for production of a film and the complainant voluntarily invested an amount for its production and even the film was partially complete and a demand for additional amount was made from the complainant and it is at this moment, she communicates a refusal to invest further amount and she files a complaint. The complaint discloses a civil dispute between the parties flowing from the liability to be discharged by the respective parties under the

agreement and it does not disclose any criminal offence as against the accused persons. We are not concerned with the other accused persons barring the present petitioner, who according to the complainant, was a conspirator inducing the complainant to invest her money in production of films which was never completed.

7 The dispute between the parties, according to us, is essentially civil in nature since Section 482 of the Code of Criminal Procedure saves the inherent power of this Court which is to be exercised though sparingly, in order to prevent abuse of process of Court and to secure the ends of justice, it is serves a salutary purpose i.e. a person should not be made to suffer a rigmarole of a litigation for a considerable length of time though *prima facie* no case is made out against him even when the complaint / FIR is taken at its face value.

In these circumstances, we deem it appropriate and justify ourselves in exercising the powers vested in this Court under Section 482 of the Code to do complete and substantial justice for which the judicial system exists.

8 In exercise of this power, we express that we are not inclined to continue the proceedings against the present petitioner flowing from the registration of the FIR vide C.R.No.5 of 2013 at Oshiwara Police Station for the offence with which he is charged.

In the result, we quash and set aside the said FIR No.5 of 2013 registered with Oshiwara Police Station for the offences punishable under Sections 120B, 406, 419, 420, 420, 422, 424, 465, 468, 471, 506 r/w Section 34 of the IPC to the extent of the petitioner and direct the respondent no.1 to drop the proceedings against the petitioner on quashment of the said FIR.

9 Writ Petition is allowed in the aforesaid terms.

No order as to costs.

(SMT. BHARATI H. DANGRE, J.) **(RANJIT MORE, J.)**

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