IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4887 OF 2017

Arun Kumar Ramswarup Agarwal ....Petitioner
V/s.
The State of Maharashtra & Ors. ....Respondents

Mr. Subhash Jha i/by Law Global, Advocate for Petitioner.
Mr. K.V.Saste, APP for the Respondent-State.
Mr. Pranav Badheka with Mr. Niranjan P. i/by Mr. Prashant Pawar ,Advocates for Respondent No.3.

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

DATE :- 17TH JANUARY, 2018.

P.C. :-

The above Writ Petition has been filed for quashing the proceedings being C.C.No.397/PW/16 pending on the file of the learned Chief Metropolitan Magistrate, 47th Court at Esplanade, Mumbai. The said proceedings have arisen out of the FIR being C.R.No.102 of 2014 registered by the Economic Offences Wing, Unit No.3, Crime Branch for the offences punishable under Section 406, 420 read with Section 34 of the IPC. The said FIR was initially registered with Dadar Police Station, Mumbai and thereafter transferred to Economic Offences Wing, Unit No.3, Crime Branch, Mumbai. The said FIR has arisen out of the dispute as regards the repayment of investment which was made by the First Informant, i.e., the Respondent No.3 with the Petitioner. The Petitioner is involved in catering business and has contracts with the Indian Railways. The gravamen of the allegations as can be seen from the FIR is that after re-payment of Rs.1,76,00,000/- on 14.3.2013 made by the Petitioner towards the amount which was invested by the Respondent No.3, the Petitioner from April, 2013 stopped payment.

2 It is the case of the Respondent No.3 that in view of the stoppage of the payment towards the return of investment, he from time to time attempted to call the Petitioner . However, the phone calls made by him were not received by the Petitioner. It is further alleged that in May, 2013 a meeting was held in which meeting a schedule for repayment was fixed on 20.5.2013. It seems that a written agreement was arrived at between the Parties which is annexed to the above Petition at Page 166 containing the said schedule of payment, clause 4 of the said agreement reads thus:

> *"4] Party of the First Part hereby agrees and undertakes not to close the Bank Account from which Post Dated Cheques have been issued without replacing Fresh Cheques of the said amount in the name of Party of the Second Part. At the same time Party of the First Part shall not instruct Banker for Stop Payment of the Post Dated Cheque and shall make necessary arrangement in their Bank*

Account to honour the Post Dated Cheque on its due date."

3 It is further the case of the Respondent No.3 that the Petitioner had agreed to the repayment of 13 Crores in respect of which he had given 40 cheques. In so far as the said 40 cheques are concerned, it is stated in the FIR that the Petitioner and his wife requested the Respondent No.3 not to deposit the cheques in the bank on account of some difficulty faced by them. As a result of which the Respondent No.3 did not deposit the said cheques. After waiting for sometime, the Respondent No.3 deposited the cheques upon which the cheques were dishonoured. The Respondent No.3, therefore, once again requested the Petitioner for giving fresh cheques. Accordingly, fresh cheques were given which also on deposit were dishonoured. This resulted in the Respondent No.3 issuing advocate's notice to the Petitioner to which reply was received from the Petitioner that "**Amount due to him has been paid**". Thereafter, the Petitioner and his wife had a talk with the Respondent No.3 who sought six months' time during which period, they requested the Respondent No.3 not to file any proceedings under Section 138 of the Negotiable Instruments Act. It is the case of the Respondent No.3 that since he did not have any other

alternative, he acceded to said request. Thereafter, the Petitioner once again requested the Respondent No.3 to settle the accounts as also gave a new business proposal. However, the Respondent No.3 refused to make any investment. Thereafter, again meeting was held and settlement was reached pursuant to which in spite of suffering loss, the Respondent No.3 agreed to accept fresh cheques. It is the case of the Petitioner that when the said cheques were deposited, the same were dishonoured on the ground that the '**Account was closed**'. It is further the case of the Respondent No.3 that he thereafter made enquiry upon which he came to know that the amount invested by him was never invested in the catering business. The aforesaid facts, therefore, constitute the allegations in the FIR. It is required to be noted that FIR was registered in December, 2014. Charge-sheet has been filed in May, 2016 and, thereafter the instant Petition has been filed in November, 2017 seeking quashing of the charge-sheet and for action being taken against the Petitioner.

4 The principal contention of the learned counsel appearing on behalf of the Petitioner, Shri Jha, is that the transaction between the Petitioner and the Respondent No.3 was purely a commercial transaction in the matter of the Respondent No.3's investment in the Petitioner's catering business and the

Petitioner giving him share in the profits that the Petitioner was earning. It was the submission of the learned counsel that such a transaction is sought to be given a criminal colour and the criminal intent of cheating is sought to be fastened on the Petitioner on the basis that the Petitioner is not making payment towards the return of the investment made by the Respondent No.3. In support of the said contention, reliance is sought to be placed on the judgments of the Apex Court reported in **(1973) 2 SCC 823** in the matter of **Hari Prasad Chamaria v. Bishun Kumar Surekha and Others 2002, G. Sagar Suri and Another** reported in **(2000) 2 SCC Page 636.** It was also the submission of the learned counsel for the Petitioner that the test is, whether there was criminal intent right from the beginning which in the instant case is in the year 2008 and merely because the Petitioner has subsequently not being able to fulfill his obligation, the same would not fasten criminal liability on the Petitioner in respect of which proposition the learned counsel sought to place reliance on the judgment of the Apex Court reported in **(2007) 7 SCC 373** in the matter of **Vir Prakash Sharma v. Anil Kumar Agarwal and Another**. We have with the assistance of the learned counsel gone through the judgments in **Hari Prasad Chamaria** and **G. Sagar Suri and another (Supra)**. The said judgments were rendered in the peculiar facts that were prevailing in the said cases. There can be no gain saying of the fact that just because charge-sheet has been filed, this Court is not divested of its powers under Section 482 of the Cr.P.C. and 226 of the Constitution of India. In so far as the judgment of the Apex Court in **Veer Prakash Sharma (Supra)** is concerned, the Apex Court in the facts of the said case came to conclusion that the requirement of there being an inducement and criminal intent right from the beginning is required to be satisfied to fasten criminal liability. It is trite that judgments have to be applied having regard to the facts of a particular case, in our view, judgments cited (Supra) by the learned counsel for the Petitioner would not further the case of the Petitioner in aid of seeking the relief of quashing the FIR in the instant case. Though it may be a matter of record that some payments have been made by the Petitioner upto March, 2013, the allegation is as regards non-payment after the settlement arrived on 20.5.2013 for repayment of investment made by the Respondent No.3 with the Petitioner. However, it is the contention of the learned counsel of the Petitioner that substantial amount has been paid. We have also perused the version of the statement of account of the Petitioner which is at Page 658 of the Writ paper-book wherein the

Petitioner has disputed the receipt of the amount of Rs.1,87,00,000/- which according to the Respondent No.3 was paid in cash to the Petitioner. In our view, having regard to the facts of the present case, we do not deem it appropriate to exercise our jurisdiction under Section 482 of the Cr.P.C. and Article 226 of the Constitution of India to quash the proceedings. In arriving at the said conclusion, we have also taken into consideration the fact that FIR was lodged as long back as in December, 2014 and thereafter, the charge-sheet was filed in May, 2016 and the instant Petition has been filed in November, 2017.

5 In that view of the matter, there is no merit in the above Petition. The Petition to accordingly stand dismissed.

6 However, the trial is expedited. Needless to state that the trial Court would decide the CC No.397/PW/16 on its own merits and in accordance with law uninfluenced by the observations made in the instant order.

(SANDEEP K. SHINDE, J.) **(R.M.SAVANT, J.)**