IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3478 0F 2017

Harshavardhan Madhav Chitale	]
Aged about 46 years, Occ. Service,	]
Residing at P-3, GF-1, ATS Greens Village	]
Sector-93-A, NOIDA, U.P. 201 304	]….. Petitioner.

Versus

1]	State of Maharashtra	]
		]
2]	Micromate Computers,	]
	Through its Proprietor	]
	Shailesh Bharat Latkar, residing at	]
	571, E-Ward, Amey Prasad Building	]
	Vyapari Peth, Shahupuri,	]
	District Kolhapur	]….. Respondents.

Mr. Subodh Desai i/by Mr. Pawan Mali for the Petitioner.
Mr. A R Patil, APP for the Respondent/State.
Mr. Y P Narvankar for Respondent No.2.

CORAM : S. S. SHINDE J.
Reserved on : 21st August 2019
Pronounced on : 03rd September 2019

JUDGMENT :

1 Rule, with the consent of the learned counsel for the parties made returnable and heard forthwith.

2 By this Writ Petition the Petitioner challenges the order dated 4th February 2017 passed by the learned Chief Judicial Magistrate, Kolhapur in Regular Criminal Case No.517 of 2014. By the said order dated 4th February

2017, the learned Chief Judicial Magistrate issued process against the accused persons, amongst which Petitioner herein is accused No.3, for the offences punishable under Section 418 and 420 r/w 34 of the Indian Penal Code, and, the complaint against the accused persons for offences punishable under Section 120-B, 406, 465 and 477 r/w 34 of the Indian Penal Code is dismissed vide Section 203 of the Cr.P.C.

3. The facts leading to filing of the Writ Petition, can in brief be stated thus :-

The Petitioner herein is the original accused No.3 in the complaint filed by Respondent No.2. On 04/10/2010 the petitioner joined the services of one M/s. HCL Infosystems Ltd, i.e. Original Accused No.1, as Chief Executive Officer. The Petitioner was appointed as Managing Director of M/s. HCL Infosystems Ltd with effect from 01/10/2013. Subsequently on 28/08/2014 the Petitioner submitted his resignation to the Board of Directors and left the said company on 31/12/2014.

Respondent No.2 herein i.e. the original complainant is in the business of buying and selling of computer as well as consultancy and other allied services for more than 17 years and his business network is spread over in the State of Maharashtra, Karnataka and Goa. In the year 2008, Kolhapur Municipal Corporation floated a tender on Build-Operate-Transfer (BOT) for a period of 10 years for implementing an e-governance project. The said tender was published in the local newspaper in which information as regards various departments of Corporation was provided along with its fee structure. It is the case of the complainant that after publication of tender and before inviting bids, during the intervening period, a meeting of interested candidates was called upon by the corporation. During the said meeting one Mr. Manaskumar Das, original accused No.6, who at the relevant time was the business manager of accused No.1 company, was present along with one of his associate. It is alleged that the said Manaskumar Das, by gathering the information about the goodwill and reputation of complainant's firm as well as the complainant's social, political and professional contracts with the corporation, approached the complainant and offered to enter into an agreement with the complainant for inter alia utilizing the complainant's social, political and professional contracts and to secure the tender in favour of the accused no.1 company, and in lieu thereof Rs.5,43,20,000/- agreed to be paid by the accused no.1 company to the complainant in the manner provided under the said agreement. Accordingly, an agreement dated 05th May 2009 came to be executed in the presence of all the accused. The said agreement was signed by the complainant in the capacity of proprietor of his business firm, and Regional Manager Mr. Sabu Paul (accused No.3) on behalf of accused No.1 company. Accused No.6 Mr. Manaskumar Das – Senior Business Manager of Accused No.1, and one Mr. mahesh B Jadhav signed the agreement as witnesses. It is the case of the complainant that in terms of the said agreement, the accused company was under an obligation to disburse payments to the complaint in two ways from the amount received annual from the corporation. It is alleged that as per Table-B reflected in the agreement, the accused company had agreed to pay the consideration amount in Table-B to the complainant under any circumstances even if the complainant fails to perform his obligations. Even the governmental taxes arising out of the consideration payable to the complainant were to be borne by the accused company. It is the case of the complainant, accordingly accused company as per the said agreement had agreed to pay Rs.5,43,20,000/- to the complainant in the span of 10 years. It is also the case of the complainant that accordingly the complainant secured the tender in favour of the accused company in which lot of expenses were incurred by the complainant. It is alleged that during the said period, the complainant was induced to incur primary expenses on behalf of the accused company and, the accused company in turn issued 12-15 vouchers. According to the complainant approximately Rs.20 Lakhs worth vouchers were issued. It is further alleged that since, such large amount was invested by the complainant, his financial condition was deteriorated. The complainant thereafter repeatedly demanded money from the accused company. However, he assured on behalf of the accused company that the complainant would get his share as per agreed percentage as soon as the bills of accused company were cleared by the corporation. Thereafter the accused company persuaded the complainant that if he wants to have his reimbursement and share at the earliest, the complainant must have to take steps to ensure the payment of money from the corporation. The complainant thereafter incurred further expenses to process the payment of tender amount from the corporation, and the accused company started receiving the bill of payments periodically from the corporation. It is alleged that despite receiving the payments from the corporation, since last 4 years the accused company avoided the payment of the complainant. It is the case of the complainant that when the complainant visited Delhi and met the officers of the accused company, the complainant got to understand the accused company has been divided into three parts, first HCL Infosystems Ltd, HCL Infotech Ltd and HCL Services Ltd, and the complainant was told that his case is related to HCL Infotech and he was asked to enquire with the said company. It is alleged that accordingly the complainant visited the said department and lodged his protest. The complainant therefore was constrained to file the complaint against the accused persons.

4 It is required to be noted at this stage that before passing the impugned order, the learned Magistrate by order dated 20/08/2014 directed inquiry under Section 202 of the Criminal Procedure Code as the accused are residing beyond the territorial jurisdiction of the trial court, and accordingly concerned police station directed to make inquiry under section 202 of the

Criminal Procedure Code and to submit a report on or before 14/10/2014. Thereafter on 02/07/2016 Police Station Shahupuri submitted a report stating therein that in spite of notices under Section 91 and 161 of the Criminal Procedure Code, the accused have not extended any cooperation. Hence police did not file report under Section 202 of Cr.P.C. Therefore the learned Magistrate by the order dated 01/08/2016 fixed the matter for enquiry by Court under Section 202 of Cr.P.C. and complainant was directed to keep himself and his witnesses if any present for enquiry under Section 202 of Cr.P.C. by the Court.

5 After perusing the complaint, verification and evidence under Section 202 of Cr.PC, learned Chief Judicial Magistrate has come to a conclusion that the accused persons have dishonestly induced the complainant to spend the amounts which he would not have spent, if he were not so deceived, and therefore there is a prima facie case made out by the complainant for the offences punishable under Section 418 and 420 of the Indian Penal Code. In the impugned order, the learned Magistrate has observed that there is not a single contention in the complaint about forgery against the accused persons. The learned Magistrate further observed that there is not a single allegation that there was agreement or understanding between them whereby they have committed to cooperate for offences punishable under Section 120B of the Indian Penal Code also. It is further observed that there is

no entrustment of property with complainant by accused persons, and hence no question if its misappropriation arises. The learned Magistrate has come to a conclusion that there is no prima facie case made out by the complainant for the offence punishable under Section 406 r/w 34 of the Indian Penal Code. Resultantly, by impugned order dated 04/02/2017, the learned Chief Judicial Magistrate has issued process against the accused persons for offences punishable under Section 418 and 420 r/w 34 of the Indian Penal Code and, inter alia dismissed the complaint against the accused persons for offences punishable under Section 120-B, 406, 465 and 477 r/w 34 of the Indian Penal Code. The Petitioner, therefore, by this Writ Petition challenges the order of issuing process under Sections 418 and 420 of the Indian Penal Code by the impugned order dated 04/02/2017.

6 The learned counsel for the Petitioner submits that considering the entire proceedings, no offence is made out qua the Petitioner, and the complaint as well as the proceedings before the learned Magistrate are bereft of any material to initiate, sustain and conclude any proceeding against the present Petitioner. It is submitted that there are no averments and/or allegations made in the complaint against the present Petitioner. The agreement in question was executed on 5th May 2009 between the complainant and the accused company. It is also submitted that the Petitioner joined the accused company as CEO on 04th October 2010 and was appointed as

Managing director with effect from 01st October 2013. It is also submitted that, subsequently, the Petitioner tendered his resignation to board of directors of the company on 28th August 2014 and finally left the accused company on 31st December 2014. The learned counsel for the Petitioner thererfore submits that there is no involvement of the Petitioner in the transaction at the relevant time when the agreement was entered into.

It is submitted that in so far as inquiry under Section 202 of the Cr.P.C. as directed by the trial court is concerned, the Petitioner never received any letter whatsoever from Shahupuri Police Station in connection with the said enquiry and the address of the Petitioner was available with the accused company, therefore, the question of unavailability of the Petitioner and/or not responding and/or not cooperating does not arise. It is submitted that the there is no specific averment and/or allegation against the present Petitioner in the complaint suggesting his involvement in the commission of the alleged offences. He therefore submits that the learned Magistrate has mechanically passed the order issuing process which has resulted into miscarriage of justice. It is submitted that the dispute is purely of civil nature as the transaction relates to the alleged violation of contractual obligations under the agreement dated 05/05/2009. It is therefore submitted that the learned Magistrate without applying his mind has issued the process against the present Petitioner which is liable to be quashed and set aside.

The learned counsel for the Petitioner in support of his submissions relied upon the following judgments :-

1] Dhariwal Tobacco Products Limited & ors v/s. State of Maharashtra & anr[1]

2] Prabhu Chawla V/s. State of Rajasthan & anr.[2]

3] S K Alagh v/s. State of UP & ors[3]

4] HDFC Securities Limited & ors. v/s. State of Maharashtra and anr.[4]

5] Thermax Limited & ors. V/s. K M Johny & ors.[5]

6] State of Kerala V/s. A Pareed Pillai and anr[6] and

7] Hridaya Ranjan Prasad Verma & ors v/s. State of Bihar and anr.[7]

7 The learned counsel for Respondent No.2 Complainant submits that an agreement dated 05/05/2009 came to be executed between the complainant and the accused company, and pursuant to the said agreement the complainant was appointed as authorized representative before the Kolhapur Municipal Corporation for implementation of agreement dated 14/05/2008 executed between accused no.1 company and the corporation. It is submitted that pursuant to the said agreement the complainant has spent huge amount for making arrangement of passing of tender as well as for recovering dues

1 (2009) 16 SCC 30
2 (2016) 16 SCC 30
3 (2008) 5 SCC 662
4 (2017) 1 SCC 640
5 (2001) 1 SCC 43
6 (1972) 3 SCC 661
7 (2000) 4 SCC 168

from the corporation. It is submitted by the learned counsel for Respondent No.2 Complainant that accused Nos.1 to 9 in collusion with each other took undue advantage of the complainant and in breach of trust, caused wrongful loss to the complainant and thus cheated the complainant. It is also submitted that the accused company was bound to make payment to the complainant in terms of the said agreement. It is submitted that even in the enquiry as directed by the learned Magistrate the accused did not extend any cooperation to the police. In support of the aforesaid submissions, the learned counsel for Respondent No.2/Complainant sought to place reliance on the following judgments :- 1] K.M. Venkateshwaran v/s. State of Maharashtra and anr[8], Fiona Shrikhande v/s. State of Maharashtra[9] Rajesh Bajaj v/s. State NCT of Delhi and others[10] and Lalmuni Devi (Smt.) v/s. State of Bihar and others[11]. The learned counsel for Respondent No.2/Complainant therefore submits that the impugned order passed by the learned Chief Judicial Magistrate thereby issuing process against the accused under Sections 418 and 420 of the Indian Penal Code is legal and proper. He, therefore, submits that this Petition deserves no consideration.

8 I have heard the learned counsel for the parties. With their able assistance I have perused the pleadings and the grounds taken in the Writ Petition and the annexures thereto. I have also perused the reasons assigned

8 2005 SCC Online Bom 1695
9 (2013) 14 SCC 44,
10 (1999) 3 SCC 259
11 (2001) 2 SCC 17

by the learned Magistrate in the impugned order.

9 Admittedly accused No.1 company has entered into an agreement with the complainant on 05/05/2009 and by the said agreement Respondent No.2 Complainant was appointed as authorized representative of the accused company to represent them before the Kolhapur Municipal Corporation for implementation of agreement dated 14/05/2008 executed between the accused no.1 company and the corporation. The said agreement dated 05/05/2009 was signed by the complainant in the capacity of proprietor of his business firm, and Regional Manager Mr. Sabu Paul (accused No.3) on behalf of accused No.1 company. Accused No.6 Mr. Manaskumar Das – Senior Business Manager of Accused No.1, and one Mr. Mahesh B Jadhav signed the agreement as witnesses. It is specifically submitted that the Petitioner joined the accused company as CEO on 04th October 2010 and was appointed as Managing director with effect from 01st October 2013, and subsequently, the Petitioner tendered his resignation to board of directors of the company on 28th August 2014 and finally left the accused company on 31st December 2014. Admittedly the fact of joining the Petitioner as CEO in accused company on 04th October 2010 has not been disputed by Respondent No.2 Complainant.

10 In so far as inquiry under Section 202 of the Criminal Procedure Code is concerned, the learned Magistrate has recorded the statement of one

Mahesh Jadhav, who is a witness to the agreement dated 05/05/2009 between the accused company and Respondent No.2 Complainant. It seems that the said agreement came to be executed between the parties prior to joining the Petitioner as CEO in accused company. It can be seen from the said agreement that Petitioner is neither the party nor the signatory of the said agreement.

11 The learned counsel for the Petitioner invites attention of this Court to the Statement – Annexure A of HCL Limited wherein the information of the Petitioner is contained, and paragraph Clause (A)(4) thereof relates to the Job profile and his suitability, the said clause for the sake of ready reference is reproduced herein under :-

> "4 Job profile and his suitability :
> The role of Mr. Chitale as Managing Director & CEO of the Company includes overall responsibility for the growth and day to day business activity of the Company. He provides the necessary strategic direction to all business lines/interest of the Company. He is instrumental in the overall business development of the Company as well.
>
> Keeping in view his working with the Company and his prior experience and positions held with various Corporates, he is eminently suitable for the present position. The Company derives a lot of benefit from his diverse professional expertise and experience at Board Level and as well as in Operations of the Company. He is the key person in strategic decision making on critical issues in the business and management of the Company."

12 The learned Magistrate whilst dismissing the complaint for the

offence under Section 120(B), 406, 465, 468 and 477(A) r/w 34 of the Indian Penal Code, issued process inter alia against the Petitioner for the offence under Section 418 and 420 r/w 34 of the Indian Penal Code. So far as the case of the complainant is dishonestly induced by the accused persons as well as the accused persons have failed to repay the expenditure incurred by the Complainant as also failed to pay the consideration as agreed between the parties is concerned, it needs to be noted that the the transaction between the complainant and the accused company seems to be prior to joining the Petitioner to the accused company. Therefore the question of being Petitioner inducing the complainant from the inception of the transaction does not arise. It is pertinent to mention at this stage that there is no specific averment and/or material on record showing the prima facie involvement of the Petitioner in the commission offence. The case of the Petitioner that he joined the accused company after execution of the agreement and he is not involved in the transaction in question between the complainant and accused company has not been disputed by the complainant.

13 For the aforesaid reasons, this Court is of the considered view that the complainant has failed to produce any material on record to show the prima facie involvement of the Petitioner in the transaction in question since inception, and therefore, prima facie failed to prove the ingredients of Sections 418 and 420 qua the Petitioner. It appears that the Petitioner has no role in the

agreement and/or the transaction in question which was prior to his joining the accused company, and therefore the question of being Petitioner inducing the complainant from the inception of the transaction does not arise.

14 In that view of the matter, the order dated 04th February 2017 passed by the learned Chief Judicial Magistrate, Kolhapur in Misc. Application No.517 of 2014 of issuing process qua the present Petitioner i.e. original Accused No.3 is required to be quashed and set aside, and is accordingly quashed and set aside qua the present Petitioner.

15 The observations made herein above are prima facie in nature and confined to the adjudication of the present Criminal Writ Petition. The learned Chief Judicial Magistrate would proceed against the remaining accused and decide the said complaint on its own merits and in accordance with law, uninfluenced by the observations made herein above. The Criminal Writ Petition is accordingly allowed. Rule is made absolute to the aforesaid extent.

[S.S. SHINDE, J.]