

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 273 OF 2015

The President/Managing Director
M/s. Bharat Heavy Electricals Ltd. And ors. ...Applicants.

vs.

The State of Maharashtra and anr. ...Respondents.

Ms. Swapna P. Kode for the Applicants.
Mr. Rajendra Sorankar I/by S. K. Jain & Associates for Resp. No.2.
Mr. H.J.Dedhia, APP for the Respondent State.

**CORAM : SMT. BHARATI DANGRE, J.
DATE : 11TH OCTOBER, 2019**

PC :

1. The applicants are the office bearers of M/s. Bharat Heavy Electricals Ltd. Which floated a tender enquiry for procurement of Alloy Steel Pipes at their Burnpur site. In pursuant to the tender notice, the complainant submitted a quotation and since his quotation was lowest, on confirming the technical specification the purchase order was placed with the complainant for supply of alloy steel pipes subject to the terms and

conditions contained in the document dated 12.11.2009 which form the part and parcel of the purchase order. The compliances were to be made before a specific delivery date and the pipes were to be supplied with the Indian Boiler Regulation (IBR) inspection and to be dispatched with Mill/Test Certificate.

It is the case of the applicants that the supplies from the complainant came at delayed stage and it was not complaint of the specifications and resultantly company wrote to the complainant pointing out the deficiencies. There was exchange of legal notices between the parties. The company issued show cause notice on 1.1.2013 to the complainant in respect of business dealings with Bharat Heavy Electricals Ltd. to which the complainant has submitted a detailed reply and disputed that there was any default committed by him. Along with the petition the petitioners have placed on record various communications intimating the complainant that the pre-inspection of the material disclose that it was non conforming to the technical specification that was prescribed and therefore company suffered huge loss and it was proposed to take action against him. Consequently the supply order by specification came to be rejected by the company. It was also informed that the material supplied is not according to the specification

incorporated in the purchase order and this has come to the notice when the pipes were utilized in the project.

In this back drop, the complaint came to be lodged by the complainant on 27.12.2013.

2. With the assistance of the learned counsel for the parties, I have perused the said complaint. The said complaint disclose the commercial transaction between the complainant and the respondent qua supply of material in pursuant to the bid that was invited by the company. There are no allegations about the requirement of the material being offered by the complainant and failure on the part of the company to accept the said articles. The claim of Rs. 9,68,47,407/- ascribed in the said complaint on the basis of the amount which according to the complainant is due. Based on the complaint, J.M.F.C. Panvel on 12.12.2014 initiated process and called for police report, after verification of the complaint. A one line order that complainant has succeeded to make out prima facie case against the accused for the offences punishable under Sections 405, 406, 415, 417, 418 and 424 of the Indian Penal, was passed on 20.1.2015. On this prima facie

satisfaction process was issued against the present petitioner.

3. Reading of the complaint do not disclose any ingredients of Section 415 namely criminal breach of trust. It disclose a commercial arrangement between the parties on the settled terms and conditions, in terms of the agreement executed pursuant to the tender do not make out a case of criminal breach of trust as was sought to be canvassed by the learned counsel for the petitioner. So is the case of offence of cheating. The complaint do not disclose any element of cheating as understood and considered to be a case under Section 415 of the I.P.C. It is settled position of law that as far as offence of cheating is concerned, there should exist an element which must exist at the very inception. The tender was invited by the company and in pursuant to which the complainant has offered his bid. Any dispute as regards the quality of the material, not being as per specification, would not bring transaction between the parties within the purview of Section 415 of the I.P.C. The other sections which have been invoked and applied are Sections 418 and Section 424 of the I.P.C. The complaint even does not make out a case of cheating and wrongful loss caused to the complainant. Once it is noted that there is no cheating it can be

discerned from the complaint, Section 415 and Section 424 are not attracted at all.

In the aforesaid circumstances, issuance of process by the learned Magistrate is nothing but sheer misuse of the powers and non application of mind. It is noted that at the time of admission itself, this court itself has granted stay to the order of the J.M.F.C. and the said order was passed on 25.3.2015 continues till date.

4. In the light of the aforesaid circumstances, criminal application stands allowed in terms of prayer clause (b).

(SMT. BHARATI DANGRE, J.)