IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.370 OF 2018

Shri Ritesh Girdharilal Lakhi
authorised representative of ... Applicant
Give Realty Private Ltd.

Vs.

Surekha Thakur & anr. ... Respondents

Mr.Rajiv Chavan, Senior Advocate with Mr.Hemant Kenjalkar, Priyanka Chavan, Meenal Kamble i/b H.V. Kenjalkar for the Applicant

Mr.Niranjan Mundargi with Ms.Swati Singh & Shikh Dharia i/b Naik Naik & Co. for Resp. No.1

Mr.A.R. Patil, APP, for the Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: FEBRUARY 27, 2019

P.C.:

1. This revision application filed by the original complainant is directed against the order dated 13.4.2018 passed by the learned Sessions Judge, Mumbai, in Revision application No.166 of 2018. While allowing the said revision, the learned Sessions Judge quashed the process against Respondent No.1 for the offences punishable under sections 418 and 420 r/w section 34 of the Indian Penal Code.

2. It is the case of the applicant that in June, 2012, the company, namely, Thakur Properties (Pvt.) Ltd. which is the original complainant, approached the applicant – company for finance in its business. After executing the necessary documents, the complainant disbursed a loan of Rs.1,70,00,000/- in favour of the accused No.1 company. Accused No.2 is a Director of the said company and the present respondent No.1 is original accused No.3. The accused company did not repay the said loan but on payment of interest of Rs.30 lakhs refused the repayment. Hence, the original complainant filed a private criminal complaint in the Court of learned Metropolitan Magistrate, 18th Court, Girgaum being C.C. No.1860/SW/2016. The learned Magistrate issued process only against the accused / husband and wife on 6.6.2017 under sections 418 and 420 r/w 34 of the Indian Penal Code. Respondent No.1 challenged the said order of issuance of process against her by filing Revision Application No.166 of 2018, which was allowed by the learned Sessions Judge upholding her contentions by judgment dated 13.4.2018. Hence, this revision application.

3. The learned Senior Counsel appearing for the applicant has submitted that in the complaint, the petitioner has averred about the demand of loan financed made by the original accused and the company of the accused on executing indemnity agreement and deed of guarantee on 7.6.2012. The applicant company lent a huge amount of Rs.1,70,00,000/- in favour of the accused company. However, since 2012 till 2016, there was no repayment of the said money except Rs.30 lakhs which is the interest amount as per the said agreements. He submitted that the respondent No.1 herself deliberately abstained from signing the said agreements on 7.6.2012. Neither she came forward to sign these agreements nor did she ask for deleting her name from those agreements. The learned Senior Counsel has submitted that this act itself shows that she was a party to the documents though she has not signed but she alongwith her husband has asked for loan which they did not want to repay. The learned Counsel has submitted that the consent and act of the respondent can be gathered on the basis of other evidence especially when the accused filed civil Suit No.540 of 2016 wherein they sought mandatory declaration and injunction against the complainant. The learned Senior Counsel pointed out that the accused persons have

in fact agreed in the said suit about their monetary liability to the extent of Rs.1,40,00,000/- though it was Rs.1,70,00,000/-. He submitted that by admitting a lesser liability of the repayment of the loan, the accused have tried to avoid the said entire liability. This itself shows a deliberate act of the respondent and her husband and the company to cheat the complainant/company. He has relied on the deed of indemnity where the name of the respondents is mentioned as indemnifiers and the rate of interest payable by the accused is mentioned as 30% of the amount. Thus, the payment of Rs.30 lakhs by the respondents was the interest, however, with an intent to cheat and cause wrongful loss to the complainant, the suit is filed. The learned Senior Counsel submitted that a civil action and the criminal action can run together and the filing of the civil case is not a bar on the criminal proceedings. He has further submitted that not to repay the money will amount to cheating. On this point, he relied on the judgment in the case of **R. Kalyani vs. Janak C. Mehta & Ors.**[1]. He also argued that *prima facie*, the ingredients of the offence may not be disclosed but after considering other silent circumstances, the offence can be made out. On this point, he relied on **Medchl**

1 (2009) 1 SCC 516

Chemicals & Pharma (P) Ltd. vs. Biological E. Ltd. & Ors.[2] And also on the case of **Ram Narayan Popli vs. Central Bureau of Investigation & others**[3]**.** The learned Senior Counsel thus submitted that the order passed by the learned Sessions Judge is not consistent with law and not as per law and it is to be set aside.

4. Per contra, Mr.Niranjan Mundargi, the learned counsel while opposing this revision application, has relied on the minutes of the meeting dated 7.6.2012 of the complainant company, while passing resolution on the loan proposal for finance to Thakur Properties Pvt. Ltd. i.e., the accused company of Rs.1,70,00,000/-. He pointed out that in the said resolution, it is mentioned that the loan will be guaranteed and indemnified by Rajneesh Rampal Thakur, being a Director of Thakur Properties Pvt. Ltd. He submitted that no name of the respondent/accused No.1 is mentioned.

5. Heard. Considered the submissions made by the learned Senior Counsel and the learned Counsel for respondent No.1 and read the relevant documents produced herein. The following are the admitted facts:

2 (2000) 3 SCC 269
3 (2003) 3 SCC 641

The complainant disbursed a loan of Rs.1,70,00,000/- on execution of two documents on 7.6.2012. The entire amount is not repaid by the accused company. The two documents were signed only by the husband of the respondent No.1 and though the name of the said respondent is mentioned as an executing party, she did not sign the said documents. Civil Suit No.5420 of 2016 is filed by the accused company, wherein respondent No.1 is a party plaintiff and has admitted that on the basis of these two documents – indemnity and deed of guarantee, Rs.1,70,00,000/- was disbursed as finance to the plaintiff company. The admission on the part of respondent No.1 of execution of sale documents shows that she has accepted the civil liability of the repayment of the loan. It is true that there is dispute in respect of payment of Rs.30 lakhs. In the indemnity agreement, there is mention of payment of interest @ 30%. However, that is a disputed issue which can be agitated before the civil Court as suit is filed by the accused.

6. In order to make out a case of cheating under sections 418 and 420, it is necessary for the complainant to point out that the accused had malafide intention to cause wrongful loss to the complainant and wrongful gain to the accused. The filing of the

suit and the admission of loan of Rs.1,40,00,000/- and with payment of Rs.30 lakhs i.e., Rs.1,70,00,000/- shows that the respondent/accused did not want to run away from her major portion of monetary liability towards the accused. Respondent No.1 was not signatory to the deeds wherein the rate of interest is mentioned. Moreover, as pointed out by the learned Counsel in the resolution passed by the complainant company, it was accepted that the deed of indemnity and the deed of guarantee would be executed by the Director of the company, who is an accused before the criminal Court.

7. In the case of **Ram Narayan Popli (supra),** though the accused was prosecuted for cheating, there was additional offence of falsification of the accounts and forgery. In the said case, it was a bank fraud where amounts were siphoned and though there was a prohibition to grant loans and under such circumstances, in the said facts and circumstances, the Supreme Court has taken a view that though it is much argued that repayment is made, that itself is not an indication of lack of dishonest intention. In the said case of **Ram Narayan Popli (supra)**, the fact of misappropriation can be *prima facie* gathered but the said case of **Ram Narayan Popli**

(supra) is not applicable to present set of facts of the case.

8. Further, the principle laid down in **Medchl Chemicals & Pharma (P) Ltd. (supra)** and also **R. Kalyani (supra)**, is binding on this Court, however, these case laws are not useful in the present case.

9. The learned Counsel also relied on the case of **Devender Kumar Singla vs. Baldev Krishan Singla**[4]. The learned Counsel submitted that a false pretence not necessarily to be made in express words but it can be inferred from circumstances including the conduct of the accused. However, after going through the case, I am of the view that the decision in the said case of **Devender Kumar Singla (supra)** is not useful to the petitioner and on the contrary, it is helpful to the accused because in the said case of **Devender Kumar Singla (supra)**, though the accused lady has signed the cheques, she did not hand over the cheques to the complainant but the other accused handed over them and, therefore, the Supreme Court held that from the act of mere signing the cheque, no deception is established insofar as she was concerned. In the present case, the respondent No.1 neither

4 (2005) 9 SCC 15

signed the deed of indemnity nor the deed of guarantee on the basis of which as per the case of the complainant, the loan was disbursed to the accused company. She is neither a signatory to those documents nor is she a Director of the accused company. So, her case rather stands on a better footing than the facts of **Devender Kumar Singla's (supra).**

10. Under such circumstances, the finding given by the learned Sessions Judge that no case is made out against the respondent No.1 is legal and correct and no interference is required. Hence, the revision application is dismissed.

(MRIDULA BHATKAR, J.)