

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1403 OF 2018

1. Vikas Khullar &		
2. Vijaya @ Vijayalaxmi Shanbaug	...	Applicants
V/s.		
1. The State of Maharashtra &		
2. Rishabh International	...	Respondents

Mr.A.H. Ponda i/b. Mr.M.S. Mhambrey a/w. Mr.Sunil D'Souza for Applicants.

Mr.S.S.Hulke, A.P.P. for Respondent No.1-State.

Mr.Rahul Moghe a/w. Ms.Kritika Sethi i/b. Cyril Amarchand Mangaldas for Respondent No.2.

CORAM : A.S. GADKARI, J.

DATE : 23rd April 2019.

P.C. :

1] Heard the learned counsel for the applicants, the learned counsel for the first informant at greater length and the learned APP for the State. Perused the record of investigation.

By an order dated 16th July 2018 the applicants were granted interim relief.

2] The first information report is lodged by Mr. Aditya Daga, the Partner of M/s. Rishabh International a partnership firm having 9 partners.

It is the prosecution case that, the informant's company is in the business of manufacturing and sale of 'ladies garments'. They sold and infact *inter-alia* transported the consignment of ladies garments in favour of the company, by name, M/s. VIR International LLC situated at Miami, Florida, United States of America (USA). That the work of transporting the said consignment was entrusted to M/s. WEN Parker Logistic (I) Private Limited, Mumbai.

It is alleged that, the applicants being directors/employees of M/s. WEN Parker Logistic (I) Private Limited were under the obligation to handover the consignment in favour of M/s. VIR International LLC Company, Miami, USA, after verifying the documents such as bill of loading etc; however, deceitfully and in conspiracy with other accused persons downloaded the said shipment and handover the goods in favour of M/s. WEN Parker Logistic Inc., New-York. It is, therefore, alleged that the applicants in-conivance with the other accused persons have caused wrongful loss of approximately Rs.77,57,000/- to the

informant's company and wrongful gain for themselves. It is also alleged that, the 'Bill of Lading' produced by M/s.WEN Parker Logistic Inc. at USA is a bogus and fabricated document.

3] It is an admitted fact on record that, the said M/s.WEN Parker Logistic (I) Private Limited uploaded the consignment and shipped on board, on 14th March 2015 and the said shipment reached to USA. The record indicates that, as a matter of fact, the said M/s.VIR International LLC, Miami, Florida, USA, has received the said goods. The said fact can be clearly discerned from an e-mail sent by Mr.Shail Shah of M/s.VIR International LLC to Mr.Varun Daga, a partner of informant's firm. Thus, it is clear that, the goods are infact reached to its destination i.e. the consignee at America. It further *prima-facie* appears that, the informant's company without taking proper precaution for conducting business with an entity situated overseas has ultimately suffered loss.

4] There is another facet to the present case. The record indicates that, the informant's company had filed a Summary Suit No. 164 of 2016 in the City Civil Court at Mumbai for recovery of the said amount of the goods supplied by them to M/s.VIR International, wherein the applicant's company i.e. M/s.WEN Parker Logistic (I)

Private Limited has also been impleaded as defendant No.1. In its order dated 11th April 2017 in para Nos.15 and 16 passed in Summons for Judgment No.107 of 2016, the learned Judge of the City Civil Court Mumbai, has recorded a *prima-facie* finding that, there was a transaction between the plaintiff (informant herein) and defendant No.2 (i.e. M/s.VIR International LLC, Miami, USA) and defendant No.1 therein i.e. the applicant's company herein has played its role as transporter.

5] As noted in the forgoing paragraphs, the applicant had complied with their part of obligation of the contract and the goods in question have reached to M/s.VIR International LLC, Miami, USA. The said fact is reinforced by the communication/e-mail dated 30th September 2015 sent by Mr.Shail Shah of M/s.VIR International to Mr.Varun Daga of the informant's company. It is, therefore, *prima-facie* difficult to infer that, the applicants had intention to commit the act of cheating and thereby dishonestly inducing the informant's firm in delivering of property to M/s.WEN Parker Logistic (MIA), Miami, USA.

The documents involved in the present crime have already been seized by the police.

6] After taking into consideration the peculiar facts and circumstances of the present case, this Court is of the considered view that, the custodial interrogation of the applicants for further investigation of the present crime is not necessary.

Interim relief granted by order dated 16th July 2018 is hereby confirmed.

7] The application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]