

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 1054/2018

Pankaj M. Rathi & anr.

..VS..

State & anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V.V. Bhangde, Advocate for the applicant(s)
Shri M.K. Pathan, APP for the non-applicant no. 1
Shri G.A. Kunte, Advocate for the non-applicant no. 2

CORAM : Z.A.HAQ & PUSHPA V. GANEDIWALA, JJ.
DATED : 19/09/2019

Heard.

This is an application under Section 482 of the Code of Criminal Procedure filed by the accused praying that the FIR lodged against them by the non-applicant no. 2 for the offences punishable under Sections 406, 409, 420 and 34 of the Indian Penal Code, be quashed.

The thrust of the argument is that the FIR on its face value does not make out any of the above referred offences. To support the argument that if FIR does not make out any offence, it has to be quashed, learned advocate for the applicants has relied on the following judgments:-

(a) Judgment given in the case of Dalip Kaur and others vs. Jagnar Singh and another **reported in (2009) 14 S.C.C. at page 696.**

(b) Judgment given in the case of V.P. Shrivastava vs. India Explosives Limited and others **reported in (2010) 10 S.C.C. at page 361.**

(c) Judgment given in the case of Vesa Holdings Private Limited and another vs. State of Kerala and others **reported in (2015) 8 S.C.C. at page 293.**

According to the applicants, undisputedly, there had been transactions between the applicants and the company of which the non-applicant no. 2 is an Officer and as per the contract dated 19/07/2011 between M/s. Sunil Hitech Engineers Limited and MAHAGENCO (MAHANIRMITI), MAHAGENCO (MAHANIRMITI) was liable to pay the amount of goods in advance and the goods of which payment was received by M/s. Sunil Hitech Engineers Limited were to be supplied as per the availability of goods, and as per the resolution of the Board of Directors of MAHAGENCO (MAHANIRMITI) dated 14/12/2017, procedure was set for making payment to Sub-contractors of M/s. Sunil Hitech Engineers Limited for supplying the material. According to the applicants, as per this resolution, M/s. Nihar Steels Private Limited which happens to be Sub-contractor of M/s. Sunil Hitech Engineers Limited, agreed to supply the goods and for supply of those goods, 27 cheques worth Rs. 2,68,69,842/- were handed over to the representative of the applicants' company. It is submitted that the complainant and MAHAGENCO (MAHANIRMITI) were aware that all 27 cheques were handed over to the representative of M/s. Nihar Steels Private Limited and those cheques were encashed on 21/07/2018, however, there was no grievance till 18/08/2018 on which date the FIR came to

be lodged. It is submitted that the transaction is purely a civil dispute and even the learned Sessions Judge, while granting bail to the applicants, has made these observations in the order passed by him. It is prayed that the FIR is lodged with oblique intention to pressurize the applicants and is nothing but abuse of process of Court and hence should be quashed.

With the assistance of the learned advocates for the respective parties, we have examined the documents placed on record of this criminal application. Alongwith the reply filed on behalf of the non-applicant no. 1 – State, extracts of bank accounts showing transfer of money from one account to other is placed on record. Considering the averments in para nos. 6, 9 and 14 of the reply filed by the non-applicant no. 1 – State, supported by the extract of bank accounts, we are of the view that at this stage, as the investigation is going on, it would not be appropriate to consider the prayer made on behalf of the applicants for quashing the FIR.

The proposition laid down in the judgments relied upon by the learned advocate for the applicants is well settled, however, it would not be appropriate for this Court to exercise the jurisdiction under Section 482 of the Code of Criminal Procedure when the investigation is still in progress, and there appears to be prima facie some material on the basis of which it can be said that the investigation should not be aborted at this stage.

Hence, in the facts of the present case, in our view, the following order would sub-serve the ends of justice:-

The criminal application is **dismissed** with liberty to the applicants to approach this Court again, if required, after 4 months.

The Investigating Agency is at liberty to proceed with the investigation, and in case the charge-sheet is ready and the Investigating Agency intends to file it, it shall give one month's notice to the applicants before filing of the charge-sheet.

JUDGE

JUDGE

Ansari