NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 417 of 2020

- Devang Shah S/o Vasantlal Aged About 42 Years Director Of Mahavir Soft Image India Ltd. Second Floor, Mangalmurty Complex, Infornt Of City Gold Theater, Ahemdabad, Gujarat

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Ambikapur, District Ambikapur Chhattisgarh

---- Respondent

For Applicant	:	Mr. Pawan Kesharwani, Advocate.
For Respondent/State	:	Mr. Alok Bakshi, Additional A.G.
For Objector	:	Mr. Himanshu Sinha, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03/07/2020

Heard.

1. The applicant is apprehending his arrest in connection with Crime No.89/2020 registered at police station– Ambikapur, District- Ambikapur, (C.G.) for alleged commission of offence under Section 420 of the Indian Penal Code.

2. Prosecution case is that the applicant cheated the complainant in the manner that he dishonestly induced the complainant to pay Rs.21 lacs an advance towards supply of a machine, which the applicant had no intention to supply. Having received huge amount, applicant kept on misleading the complainant and then gave a cheque for return of the amount which cheque also bounced.

3. Learned counsel for the applicant submits that the dispute is more of civil nature and only to avoid contractual liability of receiving the supply of the goods, the complainant has lodged a false report against the complainant.

4. Learned counsel for the applicant would submit that there was no intention on the part of the applicant to cheat the complainant. He submits that

after receiving the advance amount of Rs.21 lacs, the applicant was engaged in taking necessary steps towards procurement of the machine from abroad and information in this regard was also sent to the complainant. But the complainant without further deliberation in the business transaction, engaged in theft of cheque and without the notice and knowledge of the applicant submitted the same for being honoured in the bank on 25.12.2019. It was a cheque containing forged signature therefore the applicant noticed the complainant that the act of submitting cheque with forged signature is an offence and the same should be returned to him otherwise criminal case will be registered. It was only thereafter the applicant returned the cheque. He would further submit that several letters were given to the complainant for receipt of goods and the applicant had even loaded the machine for supply but the complainant did not receive because he was no longer interested in purchasing the machine from the applicant, and therefore, in order to somehow get back Rs.21 lacs, he has lodged false report.

4. On the other hand, learned counsel for the State and Objector argue that the applicant cheated the complainant. The complainant was in search of machine and on the invitation of the applicant, complainant went to Gujarat. He was given demonstration through video and on the assurance of supply of machine, huge advance of amount Rs.21 lacs were taken from him. The complainant had no intention of supplying goods, and therefore, he kept on avoiding supply and finally, when the complainant required the applicant to return the advance, the applicant, again cheated, by giving a cheque without having any intention of payment and when the cheque was submitted in the bank, it bounced with the information that the drawer has stopped the payment. Since then, neither the goods have been supplied nor the advance has been returned, therefore, *prima facie,* case of commission of offence under Section 420 IPC is made out.

6. Having considered the submissions of learned counsel for the parties, on *prima facie* consideration, it is reflected from the material contained in the application and what has been disclosed by learned State Counsel upon perusal of the case diary that the parties had entered into an agreement for supply of a machine and advance of Rs.21 lacs was paid by the complainant to the applicant. According to the applicant, the complainant did not wait for supply of goods and stealing one cheque of the applicant, submitted cheque in the bank, which is alleged to be forged. The material disclosed before this Court, however, reflects that when the cheque was presented it was returned with the note that drawer had stopped the payment. Moreover, applicant has

not placed on record any document with regard to purchase of machine, for which, he had taken advance of Rs.21 lacs from the complainant. It appears that FIR was lodged by the applicant against the complainant only after the FIR was lodged by the complainant against the applicant. Considering involvement of huge amount and also that the cheque was not honoured, I am not inclined to grant anticipatory bail to the applicant.

7. The bail application is therefore rejected. However, the applicant would be at liberty to revive application in case Rs.21 lacs are returned to the complainant.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Ravi