IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

39 CRIMINAL APPLICATION NO. 3242 OF 2018

Manjo S/o Murlidhar Chewale,
Age : 38 Years, Occ. Business and Agriculture,
R/o. Chewale Borewel Company,
Shop No.8, Kava Road, Latur, ...APPLICANT

VERSUS

1. The State of Maharashtra
Through Gandhi Chowk Police Station,
Latur

2. Manishkumar Hrudaynarayan Upadhyay,
Age : 30 Years, Occ. Business,
R/o. Motinagar, Gandhi Chowk,
Latur ..RESPONDENTS

...

Advocate for the Applicant : Mr. S. S. Panale
A.P.P for Respondent-State : Mr. S. B. Narwade
Advocate for respondent No.2 : Mr. P.P. Uttarwar

....

CORAM : T.V. NALAWADE & M.G.SWELIKAR, JJ.
DATE : 02-03-2020.

JUDGMENT (PER T.V. NALWADE,J) :-

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. Present proceeding is filed for relief of quashing of FIR No. 228 of 2018 registered with Gandhi Chowk Police Station

Latur for the offence punishable under Sections 406, 420 of the Indian Penal Code. Relief is also claimed for quashing of proceeding R.C.C. No. 27 of 2019 pending in the Court of learned Chief Judicial Magistrate Latur, filed for the same offences and which is filed in aforesaid crime.

3. Both the sides are heard.

4. The crime was registered on the basis of report given by respondent no.2 namely Manishkumar Upadhya. In the report dated 18.07.2018, he has contended that present applicant was purchasing spare parts from his shop on credit basis. There were many transactions between present applicant and informant from 01.04.2012 to 01.04.2017. It is contended that articles required for vehicle of Bore well and hydraulic parts were sold on credit basis, and value of these articles was around Rs. 3.58 Lakhs. It is contended that every time the record like invoice, bills, delivery challan was prepared. It is contended that in the past the applicant had paid for the articles purchased on credit basis but subsequently he avoided to make the payment of the credit bills. It is contended that on 20.04.2017 he went to the shop of the applicant and he demanded the money. It is contended that promise was given by the applicant to pay the money and by giving one more promise he purchased more parts worth Rs. 13,842/- on

25.04.2017. It is contended due to this new purchase, the amount which is due from the applicant became 3.71 Lakh. It is contended that after this last transaction, the amount of only Rs. 13,500/- was given by the applicant and he has avoided to make the payment of remaining amount of Rs. 3.58 lakh.

5. The submissions made and the allegations mentioned above show that there were transactions between applicants and the informant from the year 2012, and they were continued till April 2017. Admittedly, on many occasions the applicant had paid amount in respect of the credit bills. The contention that the applicant is in dues of bills Rs. 3.58 lakh, has no particulars. Ordinarily in civil Court he will be required to prove outstanding amount from the applicant by instituting suit for recovery of money and only after that he can get back that amount. Further, the provisions of limitation Act will have to be considered by civil Court before giving decree in favour of the informant.

6. In view of nature of allegations made by the informant, it cannot be said that right from the beginning the applicant had intention to deceive the informant. Furthermore, the

transactions needs to be proved by the informant in Civil Court. It can be said that the informant wants to pressurize the applicant by making it criminal matter. This Court holds that the dispute is of civil nature and it will abuse of process of law, if the applicant is directed to face the trial for the aforesaid offences. In the result, following order :-

ORDER

I. Application is allowed.

II. Relief is granted to the applicant in terms of prayer clause ''B-1''

Rule made absolute in those terms.

(M.G.SWELIKAR)
JUDGE

[T.V. NALAWADE]
JUDGE

YSK/