

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 6327 OF 2017

1. Mayur Kailashchandra Khandelwal,
Age 28 years, Occu. Business,
 2. Kailashchandra Dulichand Khandelwal
Age 58 years, Occu. Business,
- Applicant No. 1 & 2 R/o. Swaminarayan
Nagar, Savda, Tq. Raver, District
Jalgaon.

3. Akil Husonoddin Shaikh,
Age 37 years, Occu. Service,
R/o. Chandani Chauk, Savda,
Tq. Raver, Dist. Jalgaon.

....Applicants.

Versus

1. The State of Maharashtra,
Through : Savda Police Station,
Tq. Raver, Dist. Jalgaon.
2. Saniya d/o. Sayyad Kadri,
Age 23 years, Occu. Builder and
Business, R/o. "Radhakunju",
Jamner Road, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

....Respondents.

Mr. K.C. Sant, Advocate for applicants.

Mr. S.J. Salgare, APP for respondent No. 1/State.

Mr. S.N. Suryawanshi, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATED : 07/12/2020.

ORDER : [PER T.V. NALAWADE, J.]

1. The proceeding is filed for relief of quashing and setting

aside C.R.No. 40/2017 registered with Savda Police Station, District Jalgaon for the offences punishable under sections 420, 406, 120-B and 34 of Indian Penal Code. During pendency of the present matter, chargesheet came to be filed. Permission was granted to the applicants by this Court by order dated 2.11.2020 to claim the relief of quashing of the case itself and accordingly, both the sides are heard for this relief.

2. The crime was registered on the basis of report given by respondent No. 2 on 28.7.2017. It is contended by respondent No. 2 that as she was working as broker in agricultural produce banana she had become acquainted with the owners of Khandelwal Transporters. Applicant No. 1 Mayur is son of applicant No. 2 Kailas Khandelwal and applicant No. 3 was working as accountant (Munim) of these accused at the relevant time. In the past, informant was hiring transport vehicles of applicant Nos. 1 and 2 for transportation of banana from Jalgaon district to other places.

3. It is the contention of informant that on 9.4.2017 applicant No. 1 approached her at Savda and said that she can hand over banana collected by her from farmers to him and he can find the traders who will give better price to her and she can make more profit. It is her contention that applicant No. 1 represented that due to transport business, they had acquaintance throughout India and

so, they were in a position to sell banana at higher price in other States. It is her contention that initially she said that she did not want to sell banana to one who was not acquainted with her and upon that applicant No. 1 represented that he was ready to execute agreement in her favour and on that basis the transactions can be made. As there was the promise from applicant No. 1 that he will give higher price, according to her, agreement was made on the next day. It is contended that written agreement was made to the aforesaid effect in her favour.

4. It is the contention of the informant that due to aforesaid agreement she started handing over banana to the applicants and that was done by her between 26.4.2017 and 18.6.2017 on many occasions. It is her contention that the banana was handed over to Khandelwal Transport, to the applicants. It is her contention that they had adopted procedure which involved sending empty truck by applicants to the field shown by informant, collection of banana from that field, taking weight of banana on weighbridge, handing over one receipt along with slip of weighbridge to her, giving of the receipt of banana by the applicants to her and making the payments to her. It is her contention that one receipt used to remain with applicants and one receipt used to remain with the driver of the truck and it was to be carried to the destination given by the applicants.

5. In the F.I.R., the informant has given the particulars of deliveries of banana made by her during aforesaid period. She has mentioned 248 such deliveries with the rate and the total amount which was payable by the applicants. She has also mentioned the amount which was actually paid after each delivery and the amount due against each delivery. The particulars show that from 21.5.2017 to 18.6.2017, no amount was given against any delivery by the applicants. Prior to that from 26.4.2017 to 20.5.2017 only on three dates nothing was paid against the deliveries. It is her contention in the F.I.R. that the amount of around 2.8 Crore was due from the applicants to her.

6. It is the contention of the informant that she had collected banana from farmers and group of farmers by promising them to give price within few days. It is her contention that as due to non payment by the applicants she could not give money to the farmers, the farmers started insisting to her to make payment. It is her contention that when she requested the applicants to give money, the applicants said that there is some financial crunch and she may give money to the farmers and after few days they will make arrangement of money. It is contended that due to this promise she made payments of some farmers, but after that the applicants started avoiding her. It is her contention that when the remaining farmers were pressing hard for their demand, she insisted the

applicants to make the payment of aforesaid amount and upon that the applicants said that she should accept 50% of the amount due for satisfaction of entire dues. It is her contention that she then realized that she was deceived by the applicants and so, she approached police.

7. The record of investigation shows that along with the F.I.R. she produced the documents of the transactions which were mentioned in the F.I.R. She also produced the copy of licence issued by Agricultural marketing Committee Yawal, District Jalgaon in her favour and in favour of one Mohinoddin. This licence was available for the period 2017-18 and it shows that it was renewed on 21.2.2017.

8. The papers of investigation contain copy of agreement dated 2.11.2016 shown to be executed by applicant No. 1 on general stamp paper of Rs.100/- denomination. This agreement was executed in favour of the informant. This document shows that applicant No. 1 had represented that due to the transport business he had acquaintances throughout India and he can use the acquaintances for selling banana. It is mentioned that he was in a position to see that informant gets good price for banana if banana is sold through him in other States. It is mentioned that to make the transactions between applicant No. 1 and the informant legal, he

was putting the agreement into writing. It is mentioned in the agreement that if he was not able to pay for the banana supplied, it was open to the informant to take legal action against him. The agreement shows that against each delivery, on the same day the price was to be paid and only if the applicant No. 1 had some difficulty in making the payment then by mutual agreement some time was to be given to him. This agreement is signed by applicant No. 1 and informant as parties to the agreement and two other persons have signed as witnesses. The police papers include the statement of stamp vendor showing that this general stamp was purchased by applicant No. 1. The relevant record is also produced by the stamp vendor.

9. In the papers of investigation there is copy of partnership agreement which was executed between informant and Shaikh Mohinoddin. It shows that on 5.4.2017, the date of agreement, the licence issued by Marketing Committee was in favour of Shaikh Mohinoddin and he was allowing the informant as a partner to work as broker in banana. The profit made was to be shared by informant and Shaikh Mohinoddin. It shows that banana was to be collected by informant and after receiving the payment from traders the amount of farmers was to be paid and profit was to be distributed.

10. The record of investigation shows that most of the record

was produced by the informant before police. This record includes copies of aforesaid agreement, copies of bilties mentioned in the F.I.R., copies of weight record prepared by weighbridge, copy of licence issued by Marketing Committee, register prepared by informant in respect of this business as broker. All this record was taken over by the police under panchanama on 28.7.2017.

11. The learned counsel for applicants submitted that the applicants are not admitting that there was agreement of aforesaid nature between applicant No. 1 and informant. He submitted that applicants are not admitting that informant had handed over agricultural produce banana to applicants for sale. He submitted that applicants are not admitting that the payments were made and the amount due from them to informant is more than Rs.2.8 Crore. The learned counsel for applicants submitted that applicants are doing the transport business and due to that they had some transactions of supply of truck for transport to the informant and it is the informant who was selling the banana directly to the traders.

12. In view of the nature of defence taken by the applicant this Court asked the learned APP and learned counsel for the informant to show the relevant record and show the co-relation between the record on the basis of allegations made by the informant in the F.I.R. The learned APP was advised to show atleast

some transactions for illustration purpose. The learned APP showed many transactions for illustration. This Court is quoting some of those transactions to show that applicants were doing the business of broker in banana. Admittedly, applicants had not obtained any kind of licence from Marketing Committee to do the business as broker.

13. In the particulars given by informant in F.I.R., there are many transactions starting from 1.5.2017. There are two transactions of two different dates which can be selected as illustrative transactions and they are at item Nos. 4 and 7. They show that truck Nos. HR-73/7542 and RJ-11/6436 were used. On record there is copy of bilty prepared by the applicants dated 1.5.2017. It is on the printed book of Khandelwal Transport. It shows that Hindustan Fruit Company was sending the goods, banana to Yasin Fruit Company of Mirut. The value of the banana was around Rs.84550/-. The other bilty in respect of truck No. 6436 is dated 2.5.2017 prepared by Khandelwal Transport, but on this bilty the name or address of the receiver is not mentioned. These transactions mentioned in the F.I.R. were confronted by police to Amjad Khan who is the owner of Hindustan Fruit Company. His police statement dated 20.7.2017 shows that he was purchasing banana from applicant No. 1. He says that he is authorized broker and he used to sell banana to the traders of other State after purchasing the

banana from applicant No. 1. His statement shows that the particulars given by the informant in respect of some trucks are in respect of transactions which were made by him with applicant No. 1. There are as many as 14 transactions which are admitted by him in police statement and they were made from 1.5.2017 to 28.5.2017. It is his contention that applicant No. 1 used to tell him as to from which field the banana was to be collected and accordingly, he used to go to that field. According to him, on every occasion the applicants used to send truck to that field and there used to be one man to show the field. The other record shows that the said man was working for informant. It is the contention of this witness that on each occasion the weight of the banana was recorded at weighbridge and he used to get one copy of that weight. According to him, with the bilty prepared by applicants the banana was sent to traders from other State. It is his contention that the traders from other State used to deposit the price directly into his account which was opened by him in Punjab National Bank, Savda. According to him, he used to pay the price to applicant No. 1 as per the agreement between him and applicant No. 1. He has produced copies of bilties and weight receipts in respect of these transactions. According to him, on every occasion, he paid the price of banana to applicant No. 1. It appears that account statements of informant, applicants and other witnesses are collected by police. The police statement of this witness shows that he was not having transactions directly with the

farmers. It is not the case of applicants that they were having such transactions with the farmers and the agreement shows that it is the informant who was having transactions with the farmers and she was to hand over the banana to the applicants. Thus, the statement of this witness is consistent with the case of informant.

14. There is police statement of Rais Patel dated 22.10.2017 and this statement was also shown by way of illustration that there used to be direct transactions by this witness with applicant No. 1. Those transactions were made between May 2017 and June 2017. He has given particulars of 14 such transactions which were mentioned in the F.I.R. with truck numbers. By way of illustration, the transaction dated 7.5.2017 when truck No. MP-09/9874 was used can be considered. Other similar transaction dated 7.5.2017 when truck No. RJ-02/1840 was used can also be considered. These transactions are mentioned in the F.I.R. and remaining transactions are also mentioned in the F.I.R. According to him, he had made transactions with applicant No. 1 except one transaction which was made with Feroz Patel. His contention is also to the effect that he made payment in respect of the banana purchased from applicant No. 1 on the same day. He is also authorized broker. The statement of this witness shows that the man appointed by informant used to show the field from where they used to collect the banana.

15. In police papers there are statements of some traders like Ayaz Patel and there are statements of some farmers and leaders of group of farmers showing that they had direct contact only with the informant and they had sold banana to the informant. There statements show that they had no contact or concern with Khandelwal. However, the other record if considered together show that informant used to hand over most of the banana to Khandelwal Transport for sale. There is statement of one Vilas Pande dated 19.12.2017 and this statement shows that informant used to come with the men of Khandelwal to field and she used to hand over banana to Khandelwal. This statement also shows that on two occasions money which was due from informant to him was given by applicants. The total amount of Rs.3.5 lakh was collected on 2.6.2017 and 3.6.2017. This circumstance again supports the allegations made by informant that she was handing over banana to the applicants and she was making payment to the farmers after getting money from the applicants and that the amount mentioned in F.I.R. had become due from applicants.

16. The record shows that applicant No. 1 had promised to give higher price to informant and promise was given to give price of banana on the date of delivery itself. The record shows that accordingly, informant had promised to farmers to give higher price and make payment immediately after collecting the goods. The

record shows that accordingly on first few days, the applicant gave higher rate and payments were made on the day of delivery. The news items and circumstances show that on those occasions farmers got higher price and the payment was made immediately. However, afterwards the payments were not made and there are allegations of aforesaid nature against the applicants that they did not make payments afterwards. This record and circumstances show that it cannot be said that there is no record against the applicants to show their involvement in the offence committed against the farmers. The bilties of Khandelwal Transport were used. The receipts of weight prepared by weighbridge were made at the instance of Khandelwal Transport and there are statements to show that payments were made to applicant No. 3, the accountant of applicant Nos. 1 and 2. The allegations on the record show that applicant Nos. 1 and 2 received payment in respect of banana supplied by informant to applicant Nos. 1 and 2 which was sold by applicants. As per record they did not make the payment in respect of most of the agricultural produce to informant and in turn informant could not make payment to the farmers. Thus, it is the farmers who are infact cheated. There are some transactions showing that informant had directly sold banana to those traders, but most of the transactions were made by informant through the applicants. Those transactions were made with the applicants within short period.

17. In view of the nature of defence taken by the applicants and the record already discussed, it cannot be said that applicants had no intention to deceive. They were involved in these transactions. They had collected the money as sale proceeds, but they did not pass the amount to informant and the farmers. They were entrusted with the goods of farmers though by informant and by selling those goods of farmers the sale proceeds are misappropriated apparently by the applicants. These circumstances show that there is material to make out the offence of misappropriation and also the cheating. The representations were made to give higher price and to make payment immediately and due to that the farmers were attracted and they handed over banana to the informant and informant handed over banana to the applicants. In such cases, inference of conspiracy can also be drawn on the basis of aforesaid circumstances. Submissions made show that due to aforesaid circumstances the informant is also made accused, though she is shown as accused No. 4 after the present applicants. The record shows that to every farmer informant was saying that she would make payment after she gets amount from Khandelwal.

18. In the present proceeding applicants have produced copies of news items published in newspapers to show that the farmers had grievance mainly against informant. That was bound to

happen as it is the informant who was collecting banana from the farmers and it is the informant who was giving promise to the farmers. Against the informant, one crime is registered on the basis of report given by aforesaid Mohinoddin. This Court has refused to grant relief to informant of quashing of the F.I.R. in Criminal Application No.1520/2017 order was made on 18.01.2018 and in the said order this Court has observed that farmers were cheated and real victims were farmers and not Mohinoddin. The record shows that even when there are aforesaid circumstances the present applicants and the informant both got relief of anticipatory bail from Sessions Court in the present crime. Submissions made and the record show that the amount which is due from applicants and informant to farmers is not yet recovered. Though some accounts are shown to be seized by the police, that action is not going to help the farmers. This happened only due to relief of anticipatory bail granted in favour of the accused. Thus, the applicants and informant have made money and the farmers are duped. It is surprising that the orders of anticipatory bail made by the Sessions Court were not challenged by the State.

19. Such instances are increasing day by day. It is unfortunate, but it is a fact that all the systems are not showing sensitivity towards the problems faced by the farmers. The farmers have no resources and they cannot afford indulging into litigation.

This inability of farmers is used by the traders like applicants and they make money on the agricultural produce which farmers get after working hard. The suicides of farmers are increasing day by day as farmers are facing all kinds of problems and present problem of cheating is additional circumstance which is compelling the farmers to commit the suicide. Due to all these circumstances, this Court holds that no relief can be granted in favour of applicants.

20. The learned counsel for applicants submitted that inference that there was intention to deceive at the beginning is not possible and so, the applicants are entitled to get the relief. He placed reliance on the observations made by the Apex Court in the two cases like **2009 AIR SCW 3976 [Harmanpreet Singh Ahluwalia and Ors. Vs. State of Punjab and Ors.]** and **2009 AIR SCW 307 [V.Y. Jose and Anr. Vs. State of Gujarat and Anr.]**. The facts and circumstances of each and every criminal case are always different. On the basis of the facts of each matter it is the duty of the Court to draw some inference. This Court has quoted the relevant facts and circumstances of the present matter. The facts and circumstances show that first the atmosphere was created to lure the farmers and when the farmers started trusting, the plan was executed and payment was not made and the farmers were cheated. The record shows that the money was collected by the applicants, but it was not passed to informant who was expected to pass it on

farmers. In view of all these circumstances, this Court holds that at this stage, it is not possible to presume that there was no intention to deceive at the beginning. In the result, following order.

ORDER

The application stands dismissed.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

ssc/