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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 617 OF 2017
WITH
CRIMINAL APPLICATION NO. 618 OF 2017

1. Mr. Mahesh Babulal Mittal
Age 70 years,
Occupation: Business, Managing Director
M/s. Narmada Extrusions Limited
residing at 7/2, Khazrana Kothi,
Baikunth Dham, Indore,
Madhya Pradesh 452 001
2. M/s. Narmada Extrusions Limited
Thru its Managing Director
Mr. Mahesh Babulal Mittal
403, Rajani Bhavan,
569/2, M.G. Road,
Indore, Madhya Pradesh 452 001 .. Applicants

Vs.

1. Central Bureau of Investigation
Anti Corruption Branch,
Plot No.C-35, A, G Block,
Behind MTNL Building,
Bandra Kurla Complex,
Bandra (East),
Mumbai 400 098.
2. The State of Maharashtra .. Respondents

Mr. Mihir D. Gheewala for applicants.
Mr. H. S. Venegavkar for Respondent No.1 -CBI.
Mr. S. R. Shinde, APP for Respondent No.2.

CORAM: B. P. DHARMADHIKARI, ACTING CJ. &
N. R. BORKAR, J.

FEBRUARY 28, 2020.

ORAL JUDGMENT [Per B. P. Dharmadhikari, ACJ.] :

1. Heard learned Counsel for the Applicants, learned Standing Counsel for Respondent No.1 and learned APP for Respondent No.2 finally by issuing Rule and making it returnable forthwith.

2. Charge against the applicants was under Section 420 and 120-B IPC as also under Sections 420 and 511 IPC. Applicant No.2 is the Company which manufactures High Density Poly Ethylene bags (HDPE bags). Appicant No.1 happened to be its Managing Director and Marketing Head. It is not in dispute that during the pendency of these Applications, Applicant No.1 has expired.

3. Applicants contend that only against the Company offence under Sections 120-B and 420 of IPC cannot be sustained. Without prejudice, it is contended that the offence of conspiracy is alleged to have been committed with M/s. Rashtriya Chemicals & Fertilizers Ltd. at Alibaug and Mumbai (RCF – hereinafter referred to as "Customers") and with no other officers/customers as co-accused, charge under Section 120-B has to fail.

4. Learned Counsel, without prejudice to other arguments, submits that only on the basis of difference in space between bar-code, the inference of cheating has been drawn. Our attention has been invited to terms and conditions, subject to which supply was agreed to customers, to show that as per Clause 11 if sub-standard material supply exceeded 25%, then only rejection was envisaged. It is added that the customers used to carry out quality check at their end and after satisfying themselves about the specification of bags received, payments were made. No payments, therefore, have been made for sub-standard bags and hence no offence can be committed in relation thereto.

5. Learned Counsel for Respondent No.1 submits that establishment of RCF was visited and in surprise check, the mischief was discovered. Bags with proper density were packed at the bottom and at the top of each bale while less density bags were inserted at the center so as to avoid detection. In 20 such bales, this mischief was discovered in inspection and, therefore, an offence has been rightly registered. Learned Counsel for Respondent No.1 adds that the officers working with RCF/Customers were also party to this mischief.

6. As we have already noticed supra in charge-sheet now only accused is Applicant No.2 – Company. Prior to death of Applicant No.1 also there was no other person shown as accused. No offence, therefore, was registered against any officer of Customers.

7. If the contention of Respondent No.1 is to be appreciated, there has to be a panchanama mentioning inspection of various bales of packed HDPE bags supplied by Applicant No.2 – Company. Each such bale should have been inspected separately and the proper panchanama drawn to bring on record fact that in it bags with specified /agreed density were placed at the top and at the bottom while sub-standard bags were inserted in the middle. There is no such panchanama with charge-sheet. We gave some time to Respondent No.1 to demonstrate to this court any material along with charge-sheet to draw this inference.

8. At this stage of dictation, our attention is drawn to inspection proceedings dated 21st April, 2016 and the charts at Annexure "A" and Annexure "B" therewith.

9. There the bale number with number of bags on top and number of bags at bottom with space in the bar-code are separately mentioned, while number of bags placed in the middle with no space in the bar-code are also mentioned.

10. This chart by itself is again not indicative of any cheating. We have already referred to the conditions of supply supra and as such we find substance in contention of Applicant No.2 that as against

Applicant No.2, the offence under Section 420 read with Section 511 of IPC is not made out.

11. In view of this finding, we make Rule absolute in terms of prayer Clause (a). Both the Applications are accordingly allowed and disposed of. No costs.

Pravin D. Pandit

Digitally signed by Pravin D. Pandit
Date: 2020.03.05 18:02:47 +0530

N. R. BORKAR, J. **ACTING CHIEF JUSTICE**