# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# NAGPUR BENCH, NAGPUR

## CRIMINAL APPLICATION (ABA) NO.246 OF 2020

(Arvind s/o Dhanraj Bagde and another Vs. State of Maharashtra thr. PSO PS Lakadganj, Nagpur)

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| *Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.* | *Court's or Judge's orders.* |
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Mr. Rahul M. Bhangde, Advocate for Applicants.
Mrs. K.R. Deshpande, APP for Non-Applicant/State.
Mr. Khandwani, Advocate for Intervenor.

**CORAM: ROHIT B. DEO, J.**
**DATE: 15th DECEMBER, 2020.**

**Criminal Application (APPP) No.813/2020:**

Heard.

2. For reasons stated in the application, the intervenors are permitted to assist the learned prosecutor.

**Criminal Application (ABA) No.246/2020:**

Heard.

2. The applicants are apprehending arrest in Crime 415/2020 registered with Police Station Lakadganj, Nagpur for offence punishable under section 420 read with section 34 of the Indian Penal Code.

3. The crime is registered on the basis of complaint

dated 18.06.2020 lodged by Mr. Santoshkumar Hajarimal Agrawal, who is a Wholesale Grain Merchant and is also the President of Wholesale Grain and Seeds Merchant Association.

4. The gist of the complaint is that applicant 1 Arvind Bagde and applicant 2 Mrs. Poonam, who is the wife of Arvind Bagde, are the Proprietors of Shri Om Trading Company and Om Trading Company respectively, which deal in sale of grains. In a nutshell, the allegation is that the applicants purchased grains from 30 to 35 merchants, who are the members of the association, since last some years/months and after gaining the confidence of the merchants by being scrupulously regular in payment of dues, cheated them by purchasing grains in July and August, 2019 and issuing post dated cheques, which bounced. The total amount of the alleged purchase and non-payment is Rs.57,75,681/-, according to the informant.

5. I have perused the case diary minutely. Certain facts do not appear to be in dispute. It is common ground that the applicants did transact which the members of the association, for a considerable period, fairly and honestly. The allegation is qua the non-payment and in some cases, short payment, of the price of the grains purchased in July and August, 2019. It is further not seriously disputed that out of the thirty four members of the association who claim to have been cheated, at least nine

members have instituted proceedings under the Negotiable Instruments Act ('N.I. Act'), as far back as in October, 2019. The submission of the learned counsel for the applicant Mr. Rahul Bhangde is that there is not even a whisper in the complaints instituted under section 138 of the N.I. Act that the applicants, with the intention of cheating the merchants, purchased the grains on the strength of post dated cheques and then fled. In rebuttal, the learned APP Mrs. Deshpande and the counsel appearing for the complainant would submit that while nine merchants have taken recourse to proceedings under section 138 of the N.I. Act, the remaining merchants have not, and are therefore, well justified in prosecuting the applicants for offence punishable under section 420 of the Indian Penal Code.

6. The crucial question is, however, whether *prima facie* the prosecution has made out a case that when the applicants entered into certain transactions with the grains merchants, in the year July and August, 2019, they issued the post dated cheques intending that the cheques shall be dishonoured. In other words, the question would be whether the intention to cheat from the very inception of the transaction is *prima facie* discernible.

7. On a holistic reading of the material on record, I am of the considered view, that the failure of the applicants to ensure sufficient funds in the account/s or then, the failure to pay the price of the goods purchased on

credit, in the facts of the present case, *prima facie* does not attract the provisions of section 420 of the Indian Penal Code. It is not in dispute, that even after the cheques were dishonoured, some payment is made by the applicants to some merchants, which is accepted. The business dealings of the applicants with the members of the association were smooth and honest, even according to the complaint. It is specifically stated in the complaint that the price of the goods was paid regularly. In this view of the matter, and after making payment of more than Rs.3 crores, which is the amount referred to by the applicants and not disputed, for the previous transactions, it is difficult to even *prima facie* hold that the applicants issued the post dated cheques to cheat the members of the association of Rs.55 lakhs and or.

8. It is too well settled, to make a reference to the catena of decisions holding the field, that the process of criminal law cannot be converted into recovery proceedings. The threat of arrest and humiliation cannot be used as a leverage to recover dues. The members of the association have the post dated cheques in their possession and some of them have already taken recourse to the proceedings under section 138 of the N.I. Act. The others are free to adopt the same course, if otherwise legally permissible.

9. The grievance of the complainant is that while applicant 2 Mrs. Poonam is the Proprietor of Om Trading Company, the cheques issued on behalf of the said

concerned are signed by Arvind. Mr. Rahul Bhangde makes a categorical statement that the applicants shall, to the satisfaction of the members of the association/aggrieved persons substitute/replace any and every cheque qua which the members/aggrieved persons may entertain any doubt, for whatsoever reason and this shall be done within three days on receiving the necessary request/requisitions. The statement is accepted as an undertaking and shall be treated as a condition of pre-arrest protection, breach of which may entail *ipso facto* cancellation of pre-arrest protection. The aggrieved persons are free to submit to the learned APP the details of the cheques which are to be substituted and shall deposit the original cheques with the learned APP who shall ensure that after receipt of the substituted cheques, the cheques deposited with her shall be handed over to the applicants.

10. It is made clear that the substitution/replacement shall not imply issuing fresh cheques with different dates and shall be restricted to cheques which according to the aggrieved persons are issued by unauthorized persons or there is some irregularity or infirmity in the signature.

11. I am satisfied that the applicants have made out a case for confirmation of the pre-arrest protection granted vide order dated 14.07.2020. The pre-arrest protection is accordingly confirmed with the only modification that till

the charge-sheet is filed, the applicants shall attend the concerned police station as and when required by the Investigating Officer and that the applicants shall comply with the undertaking to substitute the cheques which is recorded *supra*.

**JUDGE**

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