

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

CRIMINAL APPLICATION NO. 928 OF 2019

Ketan s/o. Jaytilal Vaza

....Applicant.

Versus

The State of Maharashtra & Anr.

....Respondents.

Mr. R.V. Gore, Advocate for applicant.

Mrs. V.N. Patil-Jadhav, APP for respondent No. 1/State.

Mr. S.C. Sarda & Mr. S.S. Patil, Advocates for respondent No. 2.

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

DATED : 12/01/2021.

ORDER :

1. The proceeding is filed for relief of quashing of F.I.R. No. 334/2017 registered with M.I.D.C. Waluj Police Station, Aurangabad for offences punishable under sections 406, 420 of Indian Penal Code. The relief is also claimed of quashing of the chargesheet filed in this crime for the same offences. Both the sides are heard.

3. The crime was registered on the basis of report given by the present respondent No. 2. It is the contention of informant that in August 2016 applicant Ketan approached him with the proposal to invest the amount of Rs.60 lakh in the business of export of sea food. As applicant and informant were doing business at M.I.D.C. Waluj and applicant was known to informant, the informant trusted the applicant. It is the contention of informant that applicant was having

export licence and he did export of the goods worth more than Rs.13 Crore as per the representation made initially.

4. It is the contention of informant that he has account in his own name and in the name of his concern in Bank of Maharashtra, Branch Mill Corner, Khadkeshwar, Aurangabad and initially transactions were made of giving money for investment by using this account. It is contended that applicant created trust by showing the previous transactions and made informant and his company to invest Rs.40 lakh more. It is contended that a representation was made by the applicant that within two months the sale proceeds will be received and the amount can be returned. It is contended that between 18.10.2016 and 16.12.2016 by R.T.G.S. mode from his account, the number of which is given in F.I.R., the amount of Rs.40,12,000/- was transferred by informant in the account of present applicant. It is contended that by making false representation the applicant took the aforesaid amount from the informant and has deceived the informant. In view of the nature of allegations, the crime was registered for aforesaid offences.

5. It is not disputed by the applicant that by R.T.G.S. mode the amount of Rs.40,12,000/- was transferred from the account of informant to the account of applicant. The learned counsel for applicant submitted that the applicant has some record like E-mail of

the manager of the informant showing that informant was directly involved in the transactions and for particular transaction, he was given particular amount. A photocopy of so called E-mail is produced, but that document also does not tally with the contentions made in the F.I.R. The learned counsel for applicant submitted that sea food was actually exported, but the purchaser did not pay for it and the applicant was working only as middleman between the informant and the purchaser of sea food. Though the submission is made, there is no record with the applicant to show that the transaction was directly made by informant with the purchaser. When it is not disputed that aforesaid amount was given to applicant by the informant, it is up to the applicant to show that the amount was utilized for such export by him. As there is no such record, there is *prima facie* case against applicant that by making some representation he took the amount from informant, but he did not utilize that amount for the purpose for which it has given. The submissions made show that the applicant is ready to return that amount.

6. The learned counsel for applicant placed reliance on some observations made by the Apex Court in the following reported cases :-

(i) 2016 ALL MR (Cri) 4476 [Technofab Engineering Limited and Anr. Vs. Bengal Mills Stores Supply Company and Anr.].

(ii) 2011 ALL MR (Cri) 3603 (S.C.) [M/s. Termax Ltd. & Ors. Vs. K.M. Johny & Ors.].

(iii) 2011 (3) B Cr C 70 [Jitendra Nahmal Joshi @ Sharma Vs. The State of Maharashtra and Anr.].

(iv) 2018 ALL MR (Cri) 1463 [Manager, Air Ambulance Aviation Ambatt and Anr. Vs. State of Goa and Ors.].

(v) 2008 AIR (SC) 247 [All Cargo Movers (I) Pvt. Ltd. & Ors. Vs. Dhanesh Badarmal Jain & Anr.].

(vi) 2009 (Supp.) AIR (SC) 59 [V.Y. Jose and Anr. Vs. State of Gujarat & Anr.].

The facts and circumstances of each and every case are always different. On the basis of facts of the present matter and the circumstances mentioned above, it is not possible to infer at this stage that the dispute between the parties is of civil nature. This Court holds that it cannot be said that there is no material at all to make out the offence against the applicant and so, the following order.

ORDER

Application stands dismissed.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

SSC/