**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 CRIMINAL APPLICATION NO. 1172 OF 2020

1. Thirumalai Prabhu R.
   Age :- 43 years, Occ. Onion Merchants,

2. Vinodhini Prabhu Titumalai
   Age :- 39 years, Occ. Onion Merchants,
   Both R/o 5/15, Jyoti Nagar,
   Makkinam Patty, Pollachi,
   Dist. Coimbatore, Tamilnadu 642003. … Applicants
   (Orig. Accused)

VERSUS

1. The State of Maharashtra,
   Through Police Station Officer,
   Shrirampur Police Station,
   Tq. Shrirampur & Dist. Ahmednagar.

2. Sachin Vasant Shete,
   Age :- 32 yeard, Occ. Onion Merchants,
   R/o Sarswati Colony,
   Near Mhasoba Temple, Ward No. 7,
   Shrirampur, Taluka Shrirampur,
   District Ahmednagar. … Respondents

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Advocate for Applicants : Mrs. Sonawane Sunita G.
APP for Respondent No.1-State : Mr. G. O. Wattamwar
Advocate for Respondent No.2 : Mr. Rahul R. Karpe

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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**
DATED : 18th JUNE, 2021

ORAL JUDGMENT (PER V. K. JADHAV, J.) :-

1. Heard finally with consent at admission stage.

2. This is about quashing of the F.I.R. bearing Crime No. 257 of 2019 registered with Shrirampur Police Station, Taluka Shrirampur, District Ahmednagar for the offence punishable under Sections 420, 323, 504, 506 of IPC on the basis of the complaint lodged by respondent no.2.

3. Respondent no.2 deals in the business of purchasing and selling of onion. Respondent no.2 used to sell onion collected from small farmers in the wholesale market on commission. The applicants are allegedly the proprietors/partners of the firm name and styled as M/s. Shreejith Traders at Tamilnadu. The applicants herein allegedly purchased a huge quantity of onion worth Rs.2,20,55,975/- during the period of 16.06.2015 to 11.09.2015 and paid him the price of Rs.1,89,78,444/-. According to respondent no.2, the amount to the tune of Rs.30,77,431/- towards the price of purchased onion remained unpaid. Respondent no.2 repeatedly demanded the said amount. On 31.01.2019, respondent no.2 had been to the office of the applicants situated at Pollachi, District Coimbatore, State of Tamilnadu and demanded the

amount. However, the applicants allegedly abused respondent no.2, threatened him and driven him out from their office. On the basis of these allegations, the aforesaid F.I.R came to be registered against the applicants for the offence punishable under Sections 420, 323, 504, 506 of IPC.

4. Learned counsel for the applicants submits that the applicants have annexed copies of the complaints filed by respondent no.2 before the Magistrate under Section 138 of the Negotiable Instruments Act, 1881 against one Mr. Selvakumar s/o Govindaraj, r/o Pollachi, District Coimbatore, Tamilnadu. Learned counsel submits that it has been specifically stated and alleged in the said complaints that said Selvakumar, being the owner and proprietor of the firm name and styled as M/s. Shreejith Traders, has given five cheques of different amounts covering the said balance amount of Rs.30,77,431/-. Learned counsel for the applicants submits that there is no reference of the applicants in connection with said M/s. Shreejith Traders. Learned counsel submits that the applicants have no concern with the said M/s. Shreejith Traders in any manner. Learned counsel for the applicants submits that since the cheques issued by said Selvakumar were bounced, five complaints under the provisions of

the Negotiable Instruments Act, 1881 came to be filed by respondent no.2 before the Judicial Magistrate First Class, Shrirampur. During pendency of the said complaints said Selvakumar died. However, the said complaints, though stand abated, are still pending before the Magistrate. Learned counsel submits that however, in the year 2018, respondent no.2 has instituted Special Civil Suit No. 29 of 2018 against the applicants herein presenting them in the said suit as partners-owners of the said M/s. Shreejith Traders. It has been pleaded in the said suit that deceased Selvakumar, who issued six cheques out of which five cheques were bounced, was the power of attorney-cum-owner of M/s. Shreejith Traders and as such, respondent no.2 is entitled for recovery of the balance amount with interest from the applicants. Learned counsel for the applicants submits that for the first time when the said Selvakumar was no more, respondent no.2 has made certain allegations against the applicants. Learned counsel submits that so far as filing of complaints under Section 138 of the Negotiable Instruments Act, 1881 before the Magistrate, so also institution of the suit with the pleadings as referred above, the same are the undisputed facts. Learned counsel submits that therefore, even though the same is extraneous/defence material, it can be considered for quashing purposes. Learned counsel submits that the aforesaid F.I.R. has been filed maliciously with an ulterior motive. Learned counsel submits that this is nothing but an attempt of conversion of a civil dispute into a criminal dispute.

5. Learned counsel for the applicants in the alternate submits that even assuming for the sake of discussion that the applicants are having concern with the said M/s. Shreejith Traders in some manner, however, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, the same do not constitute the offence alleged. Learned counsel submits that as per the allegations made in the complaint, the applicants herein have paid the price to the tune of Rs.1,89,78,444/- out of Rs.2,20,55,975/- and the balance amount is to the tune of Rs.30,77,431/-. Learned counsel submits that the allegations made in the complaint itself indicate that there was no intention of cheating right from the inception and thus, this is an attempt of conversion of a civil dispute into a criminal dispute.

6. Learned counsel for respondent no.2 submits that where the allegations made in the F.I.R. and the evidence collected in support of the same discloses prima facie an offence, then the court is not

justified on embarking upon the inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. Learned counsel submits that it is well settled that the extraneous/ defence material cannot be considered while quashing the F.I.R. Learned counsel submits that the said complaint under Section 138 of the Negotiable Instruments Act, 1881 came to be filed against deceased Selvakumar as he was the signatory of the said cheques which bounced. Learned counsel submits that even if there is no reference about other partners or proprietors of the said firm M/s. Shreejith Traders. However, respondent no.2 has specifically pleaded about the locus of the present applicants in the afore-stated special civil suit instituted by him before the Civil Court for recovery of the amount. Learned counsel submits that there are specific allegations against the applicants that they had purchased huge quantity of onion from respondent no.2 and failed to pay him the entire amount. Learned counsel submits that it is not an attempt to convert the civil dispute into criminal dispute. This application is liable to be dismissed.

7. Learned counsel for respondent no.2, in order to substantiate his contention, placed his reliance on the case of ***Rajesh Bajaj v. State NCT of Delhi***, reported in AIR 1999 SC 1216.

8. We have also heard learned APP for the respondent State.

9. We are well aware that the power of quashing of the criminal proceeding should be exercised very sparingly and with circumspection and that too in a rarest of rare case. The Court is not justified in embarking upon the inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R or the complaint and that extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim and caprice.

10. In the instant case, the applicants have placed their reliance on some extraneous/defence material. Learned counsel for respondent no.2 has vehemently submitted that for quashing the F.I.R, such extraneous/defence material cannot be considered.

11. In the case of ***Rajiv Thaper and Others v. Madan Lal Kapoor,*** reported in (2013) 3 SCC 330, the Supreme Court has ruled that the defence material when may be relied upon to quash the proceedings. In para 30 of the judgment, the Supreme Court has considered four steps to determine the veracity of a prayer for

quashment raised by an accused. Paragraph nos. 30 to 30.5 of the said judgment are reproduced as under :

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

12. In the instant case, respondent no.2 has not disputed about filing of the complaints against deceased Selvakumar s/o Govindaraj for having committed the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. We have carefully gone through those five complaints which are part of the record. We are surprised to note that the allegations have been made against deceased Selvakumar alone with the specific contention that he is the proprietor of M/s. Shreejith Traders and in that capacity, he has issued the cheques for the balance amount as referred in the present F.I.R. Though respondent no.2 has filed his affidavit-in-reply, we do not find that respondent no.2 has explained this aspect to our satisfaction. There is no reference to the names of these applicants in the said complaints either as partners or also as the proprietors of the said firm along with

deceased Selvakumar. It is also not stated in those complaints that deceased Selvakumar, being a power of attorney, had issued the cheques in favour of respondent no.2 for the balance amount on behalf of the firm and therefore, since he being the signatory of the cheques, the complaints under Section 138 of the Negotiable Instruments Act, 1881 came to be filed against him. It further appears that only after the death of said Selvakumar, respondent no.2 has changed his stand and instituted the suit bearing Special Civil Suit No. 29 of 2018 before the Civil Judge Senior Division, Shrirampur, which is still pending wherein the present applicants have been implicated as defendants with specific pleadings that they are the owners-cum-proprietors of the said firm M/s. Shreejith Traders. All these are the admitted documents and in our considered opinion, steps 1 to 4 as laid down by the Supreme Court in the case of ***Rajiv Thaper*** (supra) stand fulfilled in the present case.

13. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***, reported in 1992 Supp. (1) SCC 335, in para 102, the Supreme Court has given the categories of cases by way of illustrations wherein such quashing power under Section 482 of

Cr.P.C. could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. In para 102(7), the following category is mentioned by the Supreme Court:

> "Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

14. In the facts of the present case as discussed in detail above, we find that the aforesaid clause in para 102 stands attracted in this case. We are of the opinion that respondent no.2 has filed the complaint with some ulterior motive and mala fide intention.

15. Even assuming for the sake of discussion that the applicants are connected to the business of the said M/s. Shreejith Traders in some manner and even if we accept the allegations made in the complaint as it is, however, we do not find that the ingredients of cheating stand attracted. It is well settled that in the case of cheating, the intention of cheating right from the inception is important. Respondent no.2 herein has already instituted the suit for recovery of the amount showing the present applicants as liable

for recovery of the amount which is due and outstanding. However, in our firm opinion, lodging of the complaint in the police station with some mala fide intention is nothing but an attempt to convert a civil dispute into a criminal dispute.

16. In the case of ***Anand Kumar Mohatta and another v. State (NCT of Delhi), Department of Home and another***, reported in (2019) 11 SCC 706 the Supreme Court has ruled that where a civil dispute is converted into criminal case to harass the accused, exercise of power to quash criminal proceedings warranted. In the instant case, the dispute is purely of civil nature and it does not constitute criminal offence.

17. The learned counsel for respondent no.2 has placed his reliance in the case of ***Rajesh Bajaj*** (supra) wherein, the Supreme Court has taken a different view in the facts of the said case. It has been specifically observed by the Supreme Court in the facts of the said case that the accused made the complainant to believe that he (accused) was a genuine dealer and would make the payment on receipt of invoices. It thus appears that the Supreme Court has considered the intention of cheating right from the inception and

further held that the offence of cheating *prima facie* made out and no ground to quash the F.I.R. Thus, we find that the facts and circumstances of the said case cannot be made applicable to the facts and circumstances of the present case.

18. In view of the above discussion with reference to the ratio laid down by the Supreme Court in the case referred above, we are of the opinion that the F.I.R. lodged by respondent no.2 is nothing but an abuse of the process of the court and the same is necessary to be quashed and set aside in the interest of justice. In view of the same, we proceed to pass the following order. However, we make it clear that it is for the Civil Court wherein the said civil suit is pending to decide the same on its own merits without getting influenced by the observations made herein.

ORDER

The criminal application is allowed in terms of prayer clause “C”. The Criminal application is accordingly disposed off.

(SHRIKANT D. KULKARNI, J.) **(V. K. JADHAV, J.)**

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