IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

945 CRIMINAL APPLICATION NO. 3964 OF 2019
HAMALBHAI VINAY GANDHI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER
...
Advocate for Applicant : Mr. Amit S. Salve
AGP for Respondent No.1-State : Mr. R. D. Sanap
Advocate for Respondent No.2 : Mr. Ram Deshpande
....

CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.
DATED : 23rd NOVEMBER, 2021.

ORDER : (**PER : SANDIPKUMAR C. MORE, J.) :**

1. By consent of the parties, heard finally at the stage of admission.

This is an application filed by the applicant for quashing of F.I.R. No.433 of 2019 dated 06.11.2019, registered with Nandurbar City Police Station, District Nandurbar for the offence punishable under Sections 420, 504 and 506 read with Section 34 of the IPC and also for quashing of criminal proceeding arising out of the same, bearing Regular Criminal Case No. 121 of 2021 pending in the court of Judicial Magistrate (First Class), Nandurbar.

2. The present petitioner is arrayed as an accused no.2 in the aforesaid criminal proceeding, whereas the present respondent no.2 is the informant in the same.

3. According to the informant/respondent no.2, he in the month of October, 2016 started shop for selling Mahindra tractors and spare parts in Navapur city on Gut no. 83, Plot No. 6, Surat-Dhule road, Navapur, District : Nandurbar. He started the said shop for co-accused Pankaj Shimpi i.e. accused no.1 and also obtained the said shop on monthly rent of Rs. 11,000/- from its respective owners. Co-accused Pankaj Shimpi was supposed to get monthly salary of Rs.15,000/-. It was to be paid by respondent no.2/informant. Accordingly the said co-accused Pankaj Shimpi started looking after the shop. However, in the month of July, 2018 when respondent no.2/ informant visited the said shop along with some other persons of his acquaintance, it was found that an amount of Rs.18,42,449/- was due from co-accused Pankaj Shimpi. Though the respondent no.2/ informant asked Pankaj Shimpi to pay the said amount from time to time but Pankaj Shimpi avoided the same and instead on 02.05.2019 sent him one sealed envelope containing one chit, wherein a threat of dire consequences was mentioned. Not even this, but the informant / respondent no.2 also came to know that during the subsistence of the transaction regarding selling of Mahindra tractors, co-accused Pankaj Shimpi started selling tractors of Swaraj Company of which the present applicant is main dealer under the name and style as “Vinay and

Company”. It is further alleged by the informant / respondent no.2 that the applicant had in fact under inducement asked co-accused Pankaj Shimpi to sell tractor of Swaraj Company on his agency and thereby committed the aforesaid offence of cheating.

4. Heard both sides along with learned APP and also perused the record inclusive of charge sheet in the aforesaid crime.

5. Learned counsel for the applicant submits that no offence under Section 420 of IPC has been established against the applicant even if the allegations made in the F.I.R. as well as charge sheet, are taken as true, there is absolutely nothing on record to show that the applicant at any point of time had intended to cheat the informant / respondent no.2. On the contrary, certain material is there on record by way of charge sheet, which indicates that after the co-accused Pankaj Shimpi closed his transaction with informant / respondent no.2 as regards to the sell of Mahindra tractors, the said co-accused Pankaj Shimpi started selling tractors of Swaraj Company as a Sub-dealer of the applicant. He further submits that there is nothing on record to show that the applicant threatened informant / respondent no.2 of dire consequences. As such, he claimed that the applicant has been involved in the

present crime only on the ground that there should not be any competition to the business of respondent no.2 / informant in selling tractors of Mahindra and Mahindra Company.

6. Learned counsel for respondent no.2 submits that though the transaction or agreement between respondent no.2/informant and co-accused Pankaj Shimpi was still subsisting but Pankaj Shimpi despite the same, started selling the tractors of other company of which the applicant is dealer. He further submits that charge sheet is already filed, wherein witnesses have stated that the present applicant with intention to cheat the informant / respondent no.2 provided tractors of Swaraj Company to co-accused Pankaj Shimpi for selling the same in the shop of the informant / respondent no.2, which was exclusively being used for selling Mahindra tractors only. As such, learned counsel for the respondent no.2 claimed that the present applicant in furtherance of common intention and by joining hands with co-accused Pankaj Shimpi has cheated respondent no.2 / informant.

7. Learned APP also supported the argument advanced by learned counsel for respondent no.2 / informant. However, learned APP pointed out that there are no criminal antecedents against the present applicant.

8. The Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 192 SC 604*** has referred certain guidelines in respect of exercising the powers under Section 482 of Cr.P.C. i.e. for quashing the FIR and the proceeding as below :

> *(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *(3) Where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
>
> *(5) Where the allegations made in the FIR or complaint*

are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) 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.

9. In the present case on perusal of the FIR and the charge sheet, it is evident that the allegations made by respondent no.2/ informant are mainly against co-accused Pankaj Shimpi who is also related to him. In fact, according to respondent no.2 / informant, co-accused Pankaj Shimpi has started the business of selling Mahindra tractors under his control but Pankaj Shimpi cheated him by retaining an amount of Rs.18,42,449/- regarding the sale of Mahindra tractors. Though such allegation is made by respondent

no.2 / informant against co-accused Pankaj Shimpi but one letter dated 30/06/2018 is also there in the charge sheet, wherein respondent no.2 / informant had allegedly disclosed that till 30/06/2018 there were no dues pending to co-accused Pankaj Shimpi in relation to the financial transactions arising out of business of selling tractors. Only it was disclosed by respondent no.2 / informant in the said letter that Pankaj Shimpi should recover the amount of Rs.2,05,000/- which was due from the concerned agriculturists who had purchased the tractors. Though respondent no.2 / informant raised objection in respect of the said letter being not written by him but it is a matter of evidence. Further there is also one letter head of the present applicant in the charge sheet, wherein it is mentioned that co-accused Pankaj Shimpi was appointed as sub-dealer to Swaraj Tractors in Navapur area under the name and style as “M/s Sidhivinayak Automobiles”. Further there are three licenses issued by the Chief Officer of Navapur Nagar Parishad, District : Nandurbar for the years 2016-2017, 2017-2018 and 2018-2019. The first two licenses to run the business, are in the name of Shri Swami Smarth Automobiles, Navapur i.e. the agency agreed to be run by co-accused Pankaj Shimpi for respondent no.2 / informant. However, the last license, which is issued in the year 2018-2019, appears to be in the name of

Siddhivinayak Automobiles under proprietorship of co-accused Pankaj Shimpi. Thus, though this license indicates that co-accused Pankaj Shimpi started the sale of Swaraj tractors in the year 2018-2019 under the name and style as “Siddhivinayak Automobiles” but there is absolutely no prima facie material on record to show that the present applicant had in fact conspired with co-accused Pankaj Shimpi for cheating the present respondent no.2 / informant by providing tractors of Swaraj tractors to co-accused Pankaj Shimpi. There is mere allegation by respondent no.2 / informant against the present applicant that he conspired with co-accused Pankaj Shimpi and assisted in his alleged cheating.

10. Further though some of the witnesses have made statements that co-accused Pankaj Shimpi and the present applicant cheated respondent no.2/informant by starting sale of Swaraj tractors in stead of Mahindra tractors, but one such witness had stated that after the dispute between co-accused Pankaj Shimpi and respondent no.2 / informant in the month of July 2018, Pankaj Shimpi started selling Swaraj tractors under the name and style as “Siddhivinayak Automobiles” being a sub-dealer of present applicant. This witness has specifically stated that respondent

no.2/informant has lodged the present crime out of fear that co-accused Pankaj Shimpi and the present applicant would compete him in the business of selling tractors. Thus, on perusal of the F.I.R. and entire charge sheet, it is evident that the main allegations are against co-accused Pankaj Shimpi and there is no role of the present applicant in respect of the alleged cheating of respondent no.2 / informant. So also the allegations against the applicanit are absurd in nature.

11. As per the guidelines referred by the Hon'ble Supreme Court as mentioned above in ***Bhajan Lal's*** case (supra), quashing powers under Section 482 of Cr.P.C. can be exercised when the allegations made in the F.I.R. or complaint are taken at their face value and accepted in their entirety, prima facie do not constitute any offence for making out a case against the accused. In the present case also, even if, the allegations in the FIR are taken as proved, no offence is made out against the present applicant under Sections 420, 504 and 506 read with 34 of IPC. There is no triable case against the present applicant. Therefore, we are of the opinion that RCC No.121 of 2021 arising out of F.I.R. No.433 of 2019 registered with Nandurbar City Police Station, pending in the court

of Judicial Magistrate (First Class), Nandurbar, at the instance of respondent no.2 / informant, is liable to be quashed to the extent of present applicant. Hence, we pass the following order.

O R D E R

I) The criminal application is hereby allowed in terms of prayer clause “B-1” to the extent of present applicant.

II) The criminal application accordingly stands disposed of.

(SANDIPKUMAR C. MORE, J.) **(V. K. JADHAV, J.)**

vsm/-