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# IN THE HIGH COURT OF BOMBAY AT GOA

## CRIMINAL WRIT PETITION NO.17 OF 2020

Rishi Gupta,
son of Premsagar Gupta, aged 41 years,
Indian National, r/o. 201, Priyanka Apartment,
Sion Trombay Road, Chembur, Mumbai. **...Petitioner**

*Versus*

1. State of Goa
   through the Public Prosecutor,
   High Court, Panaji, Goa.

2. The Police Inspector,
   Calangute Police Station,
   Calangute, Goa.

3. Mrs. Kamalpreet Kaur,
   r/o. 4, 5, 6-P.K. Palace,
   Bhoomi Acres, Thane (West),
   Maharashtra.

**...Respondents**

**Mr. Nitin Sardessai, Senior Advocate with Mr. Vibhav R. Amonkar, Advocate** *for the Petitioner.*

**Mr. Pravin N. Faldessai, Additional Public Prosecutor** *for the Respondents No.1 and 2.*

**Mr. E. Abrol with Mr. Jatin Ramaiyya, Advocate** *for the Respondent No.3.*

**CORAM: M. S. SONAK &**
**SMT. M. S.JAWALKAR, JJ.**

**Reserved on: 29th July 2021**

**Pronounced on: 2nd August 2021.**

**Judgment (Per. M. S. Sonak, J).**

***1.*** Heard Mr. Nitin Sardessai, learned Senior Advocate with Mr. Vibhav R. Amonkar, learned Counsel for the Petitioner, Mr. Pravin N. Faldessai, learned Additional Public Prosecutor for the respondents No.1 and 2 and Mr. E. Abrol with Mr. Jatin Ramaiyya, learned Counsel for the respondent No.3.

***2.*** Rule. The Rule is made returnable forthwith at the request and with the consent of the learned Counsel for the parties. Even otherwise, by our order dated 25.03.2021, we had made it clear that this writ petition will be listed for final disposal after three weeks.

***3.*** This petition is for quashing FIR bearing No.144 of 2019 and the consequent criminal proceedings initiated in the Court of Judicial Magistrate First Class, Mapusa qua the petitioner herein. The petitioner, in terms of the impugned FIR, has been charged with offenses under Sections 406 and 420 r/w. Section 34 of the Indian Penal Code.

***4.*** Mr. Sardessai, learned Senior Advocate for the petitioner submits that this is a case where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not constitute any offense or make out any case against the petitioner-accused. He submits that this is a civil dispute having no criminal profile whatsoever at least qua the petitioner. He submits that even the allegations in the FIR/complaint at the highest suggest that there was some breach of contract. There are no allegations that suggest any dishonest intention on the part of the petitioner at the very time when he entered into the contract in question. He submits that at a later point of time, the parties executed an agreement, in terms of which the petitioner was expressly excluded from discharging the contractual obligations, and in fact, the complainant-respondent No.3 along with the remaining accused persons promised to make payments or refunds to the petitioner. He submits that the continuance of criminal proceedings against the petitioner would amount to an abuse of the process and therefore, this is a fit case where the impugned FIR must be quashed and the criminal proceedings in pursuance of the same are stopped as against the petitioner. Mr. Sardessai relies on ***State of Haryana v/s. Bhajan Lal***[1]***, International Advanced Research Centre For Powder Metallurgy And New Materials (Arch) And Others v/s. Nimra Cerglass Technics Private Limited And Another***[2] and

**1** (1992) Supp (1) SCC

**2** (2016) 1 SCC 348

***Anand Kumar Mohatta v/s. State (Govt. of Nct of Delhi***[3] in support of his contentions.

***5.*** Mr. E. Abrol, the learned Counsel for respondent No.3 submits that there is more than sufficient material on record which establishes the complicity of the petitioner in the offenses under Sections 406 and 420 of the IPC. He submits that there is enough material on record to establish that the petitioner, right from the beginning, with a dishonest intention, induced the complainant-respondent No.3 to invest an amount of ₹76,50,000/- for operating in the hotel business at La Habbana Beach Resort, Calangute, Bardez-Goa, but thereafter failed to admit the complainant as a partner in the hotel business or even failed to allow the complainant and her husband to effectively undertake the hotel business thereby committing the offenses of criminal breach of trust and cheating. He referred to the various agreements to elaborate on the complicity of the petitioner in the transactions relating to the hotel business and submitted that there was sufficient material on record to draw the inference that the petitioner, right from the beginning, had a dishonest intention of cheating and criminally breaching the trust reposed in him by the complainant-respondent No.3. Mr. Abrol

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**3** (2019) 11 SCC 706

submitted that quashing of an FIR can be allowed only in rare circumstances and this was not a fit case for quashing of the FIR.

***6.*** Mr. Faldessai learned Additional Public Prosecutor also submitted that the charge sheet has been filed in the matter and the FIR was registered based on sufficient material which suggested the involvement of the petitioner in the offenses under Sections 406 and 420 of the IPC. He also submitted that this petition may be dismissed.

***7.*** The rival contentions now fall for our determination.

***8.*** The impugned FIR in the present case refers to the following:

> *'16.* BRIEF FACTS OF THE CASE (Add separate sheet, if necessary):
>
> ***MAY IT PLEASE YOUR HONOUR***
>
> *In the limits of your Honourable Court and within the jurisdiction of Calangute Police Station that prior to 15.04.2019 TNK at La Habbana Resort, Sautawado Calangute Bardez Goa, accused mentioned at Column No. 11 at Sr. No. A-1, A-2 & A-3 with their common intention induced the complainant to invest money in their hotel business on pretext of making her a partner into their hotel business, as such complainant invested sum of Rs. 76.50,000/(Seventy Six lakhs fifty*

*thousand only) and further the above mentioned accused failed to admit the complainant as a partner in their hotel business, thereby committed criminal breach of trust and cheated the complainant to the tune of Rs. 76,50,000/-.*

*Thus the accused persons mentioned at Column No. 11 at Sr. No. A-1, A-2 & A-3 have committed the offence punishable under sec 406, 420 r/w 34 IPC.'*

***9.*** Now, nothing whatsoever was pointed out from the record and more particularly, from the complaint dated 15.06.2019, which is the basis for the FIR about any assurance to admit respondent No.3 as a partner in the hotel business. In fact, nothing was pointed to suggest that all the accused persons were in some partnership for running the hotel business at Calangute. In the complaint dated 15.06.2019, the complainant, had made reference to payment of ₹15 lacs but the FIR nowhere alleges that the petitioner at least with any dishonest intention to begin with, entered into any contract with the complainant or otherwise with a dishonest intention induced the complainant to make any investment in the hotel business. In the absence of any such material qua the petitioner, the continuance of criminal proceedings against the petitioner might indeed, amount to the abuse of the process.

***10.*** Since, the FIR is based on the complaint dated 15.06.2019, Mr. Abrol and Mr. Faldessai were justified in contending that the Court must focus on the complaint dated 15.06.2019. Accordingly, the entire complaint dated 15.06.2019 is transcribed below for the convenience of reference:

*'To,*
*Inspector of Police / Police Officer in Charge,*
*Calangute-Bardez Police Station,*
*Goa.*

*Subject: Complaint against the accused persons namely, Rishi Gupta, Randhir Thakur, Zeeshan Shaikh, Mrs. Shabnam Shaikh has committed an offence IPC U/section 347, 350, 352, 420, 406 R/W 34.*

*Dear Sir/Madam,*

*1) I, Mrs. Kamalpreet Kaur Kohli, residing at the address mention as above, having a hotel restaurant namely Patiala Blu Fine Dine at Thane, Maharashtra. My earning and source of income is from hotel and restaurant I am doing the business from last many years as I also take a contract for management of hotel and services.*

*2) So, sir these above mentioned accused had approached me for partnership of the restaurant to run the restaurant in the equation of ratio will be 50:50. I later on respond positively to them and I had come to visit the said premises which was situated in Goa for running the restaurant along with my husband. We had discussed at Goa premises and confirmed the same ratio only after seeing the said documents i.e 1)*

*Registration Certificate 2) No objection Certificate 3) Department of Excise 4) Food registration 5) Bill of the company. Exhibit-A*

*3) I had started my business and brought my EDC machine from Thane because the partners insisted me if you want to take the additional service of food and beverages then you have to bring your EDC machine from your hotel in Thane, I agreed for the same. They also informed me that we do not have the EDC machine with our restaurant and you completely handle the restaurant of food and beverages as I started my business from time to time. Exhibit-B*

*4) Sir later I had been informed that as per your beverages income you will invest money for partnership. For running rooms and maintenance in ratio of 50:50 I also agreed for the same with the trust I had proceeded with my EDC machine and account I had made the payments to my partners from account of Axis Bank Ltd. Exhibit-C*

*5) Sir I was added in their group and our conversation as per the WhatsApp has been recorded with expenses, expenditure, sales and etc. Exhibit-D*

*6) So sir they had also furnished me the expenditure list to my mail which all partners has to decide. After approval of the partners we use to rely on the same statement. We also use to discuss about future development of sale and proceed with the business. As we use to chat for the same expenses as per the WhatsApp group. ExhibitE*

*7) So sir as per the whatsapp group they also use to inform my husband on WhatsApp group about the* *bills, liabilities, expenditure and all expenses towards the expenditure of the hotel. These all WhatsApp chats use to come on my husband's mobile as me and my husband were jointly working at the same premises. All WhatsApp chats, mails of beverages my husband was handling with my and my partners consent. Exhibit-F*

*8) So sir later Mrs. Shabnam informed us that she will enter management agreement with the owner and later on she promised that I will execute with you and on that time I agreed for the same . Exhibit-G*

*9) After the execution of the agreement I had spoken to her to execute my management agreement to which she also agreed. But later on she failed to do so which I had prepared with my signature on it. But she had not come to give her signature and she failed to do so with her malafide intention. Exhibit-H*

*10) So sir my dispute had started because of the management agreement. I demanded her my payments after she had given me the cheque of 15 lakhs dated 15/02/2019. And at the same time she had given me another cheque which was blank. She also informed me that first you clear 15 lakhs cheque and later we will continue with the business and keep the security blank cheque till I make the agreement. After few days she started using filthy languages, she also tried to implicate my husband in a false case as per the Women's Protection Act. She also use to say me if you people act too smart then your husband will be behind bars with my false complaint because I am a woman and he is a man. As me and my husband were staying at the same hotel premises I was little shocked and I was afraid as I use to travel from Mumbai Goa and Goa to Mumbai. I use to leave my husband alone in* *the hotel as he use to manage the food and beverage business. As I was under fear and shock as how she can think about the same, as my duty I had informed my husband to be aware and stay away from Mrs. Shabnam and in my absence you will not talk to Mrs. Shabnam and my husband agreed for the same Exhibit-I*

*10) So sir later she and another partners use to target me and my husband for some or the other dispute. We also use to stay away from these partners within some days I had informed Shabnam that I am depositing the cheque on the date which you have given and written on the said cheque. Then she politely requested me please deposit the said cheque after 2-4 days. Then also I cooperated with her and agreed for the same Exhibit-J*

*11) So sir as per the instructions of my partners and Mrs. Shabnam I had deposited the said cheque after 2-4 days of the said amount of Rs.15 lakhs, which the cheque was returned with the memo of insufficient balance. When I called her that your cheque is bounced and you had given me a blank cheque which you had committed a fraud with me. She told me that you wait and if you try to act then you have to face a dire consequences. As the discussion with her I had not gone to the Goa hotel premises. Then we called her after 5 days and informed her that please return our money which you have taken, she told me that you come to Goa hotel and then we will settle and you bring all my dues what to be paid I will comply the same.*

*12) So sir later on I went to hotel, first she had not spoken to me and she had planned against us which* *was a dub of doubt. I had noticed on that day but I had not raised any objection to her. After 4-5 days she had assaulted me, abused me with my husband along with her partners and employees, which I was hurt very badly as my complaint was registered on 26/03/2019 and FIR no. 74/19. The medical was given as per the medical report. Exhibit-K*

*13) So sir, my husband has also given complaint of cheating against these said accused on dated 24/03/2019. On the same complaint the police has not taken action stating that your wife is the partner and the victim and tell her to give the complaint in writing. As now I had got the evidence and collected from the bank and authorities which I have to bring on the record of the police station so that is why it has been delayed to give the complaint at your police station. Exhibit-L*

*14) So sir I request to you and your authorities to kindly consider my complaint under these sections which the accused had committed offence with their malafide intentions. So with this I request the authorities to register the complaint as early as possible. I am ready to cooperate to the police station whenever I shall be called by this department. I shall be bounded and shall ever pray in the equity of natural justice.*
*Waiting for your earliest response.*
*Thanking you.*

*Sd/-*
*Yours faithfully,*
*(Kamatpreet Kaur)*
*In person applicant*

***11.*** Now, even if all the allegations in the complaint are taken at their face value, still we fail to understand how the ingredients of Sections 406 and 420 of the IPC have been made out qua the petitioner-Rishi. The allegations mainly concern Ms. Shabnam Shaikh(A4). There is a reference to Randhir Thakur, Zeeshan Shaikh as well. The reference to the petitioner-Rishi is to be found mainly in the "Subject" at the commencement of the complaint. Thereafter, there are extremely vague allegations about "another partner". There are no allegations or in any case any specific allegations against the petitioner-Rishi having made any inducements to the complainant or otherwise tricked her into investing the amount of ₹15 lacs in the hotel business. There are no allegations about any promise of admitting the complainant as a partner in the hotel business. There are no allegations that there was any partnership comprising the petitioner and the other accused running the hotel business. Based upon such complaint, Mr. Sardessai is quite right in contending that the ingredients of offenses under Sections 406 and 420 of the IPC were not even remotely made out qua the petitioner.

***12.*** Both, Mr. Sardessai and Mr. Abrol refer to the Settlement And Release Agreement dated 03.12.2018. Now, this agreement is between the petitioner-Rishi, Shabnam Shaikh, Randhir Thakur, and the complainant. The agreement states that though it was executed on 03.12.2018, the same is to take effect from 01-11-2018.

***13.*** The Settlement And Release Agreement define Rishi, Shabnam, and Randhir collectively as "initial partners". Out of that, Shabnam and Randhir are collectively described as "initial operating partners". Thereafter, Shabnam, Randhir, Kamalpreet (complainant), and Gurmeet (complainant's husband) are collectively described as "Promoters". The agreement then proceeds to acknowledge that the petitioner-Rishi was inexperienced and therefore it was agreed that he would be a sleeping partner as against his investment of ₹1.76 Crore in the hotel business. The agreement then records that on 09.11.2018 it was agreed between the initial partners that the petitioner-Rishi would exit from the hotel business and the promoters would take over the share of Rishi in the hotel business and repay him a sum of ₹2.51 Crore, part of which was towards refund of security deposit provided by Rishi. This agreement records the commitment of the promoters, which includes the complainant to pay to the petitioner-Rishi an amount of ₹2.51 crore together with interest.

***14.*** Now, the aforesaid Settlement And Release Agreement, which is signed by the complainant-respondent No.3 as well as the petitioner-Rishi was executed on 03.12.2018. The complaint has been filed on 15.06.2019. Apart from the fact that there is no reference to this Deed in the complaint dated 15.06.2019, the Deed, prima facie establishes that the petitioner-Rishi, at the highest, was some investor or a sleeping partner together with others. In any case, the Deed dated 03.12.2018 which is signed by the complainant-respondent No.3 itself acknowledges the exit of petitioner-Rishi from the hotel business, in place of promise by the promoters that he would be paid an amount of ₹2.51 crore together with interest. Now, the expression "promoters" includes not only Shabnam and Randhir(A2 and A4) but also the complainant-Kamalpreet and her husband Gurmeet. Having regard to this document, it is quite inconceivable as to how the ingredients of Sections 406 and 420 of the IPC can be said to have been made out qua the petitioner-Rishi. Therefore, even if the entire complaint dated 15.06.2019 is scanned or taken at its face value, we find that there is nothing therein to conclude that the ingredients of Sections 406 and 420 of the IPC have been made out as against the petitioner-Rishi.

***15.*** Mr. Abrol referred to several Sub-Management Agreements forming a part of the record. Now based on these Sub-Management Agreements, there is again nothing to indicate the charges that the petitioner-Rishi right from the start, entertained any dishonest intentions and induced the complainant to invest any amounts in the hotel business thereby cheating her or committing the offense of criminal breach of trust. Mr. Abrol also referred to the statement of the petitioner-Rishi of 06.07.2019 and pointed out that the petitioner-Rishi has admitted that an amount of ₹16,50,000/- was sent to Mr. Dennis Shivani as payment towards rent of the La Habbana property and this money was received by him from F&B business at La Habbana business which was at that point of time was run by Mr. Gurmeet Singh. Now, nothing is incriminating in this statement or there is nothing in this statement to make the charges under Sections 406 and 420 of the IPC stick to the petitioner-Rishi.

***16.*** Mr. Abrol also referred to the statement dated 23.07.2019 given by Farooq Mushtaq Shaikh at the Calangute Police Station. Now, even this statement, does not suggest the commission of any offense under Sections 406 and 420 of the IPC by the petitioner-Rishi. Merely because there is a reference to the petitioner-Rishi in the context of certain transactions relating to the hotel business, it is not possible to infer any dishonest intention right from the beginning, to induce the complainant to make any investments in the hotel business.

***17.*** True, in this case, the charge sheet has been filed by the prosecution. In ***Anand Kumar Mohatta***(supra), the Hon'ble Apex Court has held that inherent powers of the High Court can be exercised for quashing criminal proceedings even after the charge sheet has been filed. Precisely because the charge sheet has been filed, we permitted the learned Counsel for the parties to take us through the statements of the witnesses or any other material placed by the prosecution on record along with the charge sheet to see whether such material suggested the commission of offenses under Sections 406 and 420 by the petitioner-Rishi. The material which was pointed out to us does not suggest the involvement of the petitioner-Rishi or does not make out the ingredients necessary for the petitioner-Rishi to be charged with offenses under Sections 406 and 420 of the IPC.

***18.*** In ***Anand Kumar Mohatta***(supra), the Hon'ble Apex Court has held that the essence of Sections 405 and 406 of IPC lies in the use of the property entrusted to a person by that person, in violation of any direction of law or any legal contract which he has made during the discharge of such trust. None of such allegations are to be found in the complaint or the material supporting the charge sheet qua the petitioner-Rishi. The dispute between the complainant and the petitioner-Rishi has the contours of civil dispute at the highest and does not constitute any criminal offense. Mr. Sardessai pointed out that it is the complainant along with the others who are due and payable an amount of ₹2.51 crore to the petitioner-Rishi and to avoid the same, such a complaint came to be filed in an attempt to involve the petitioner-Rishi in criminal proceedings. In ***Anand Kumar Mohatta***(supra), the Hon'ble Supreme Court observed that the complainant in the said case made no attempts to file civil proceedings to recover the amounts but only filed the criminal complaint. The Hon'ble Apex Court observed that this appears to be malafide and unsustainable and there was a growing trend in business circles to convert purely civil disputes into criminal cases.

***19.*** In ***International Advanced Research***(supra), the Hon'ble Supreme Court has explained the distinction between cheating and breach of contract by stating that it would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offense of cheating. However, if all that is established that a representation made by the accused was subsequently not kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. A mere breach of contract cannot give rise to criminal prosecution for cheating unless the fraudulent or dishonest intention is shown at the beginning of the transaction. In a case where from the averments made in the complaint, essentially inferences of dishonestly were not made out, the complaint/FIR was liable to be quashed.

***20.*** In ***Bhajan Lal*** (supra), the Hon'ble Supreme Court has set out the categories of cases in which the inherent power under Section 482 CrPC can be exercised. The $1^{st}$, $3^{rd}$ and $5^{th}$ categories set out therein are as follows: (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 offense or make out a case against the accused. (2) 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 offense and make out a case against the accused. (3) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

***21.*** According to us, this is a matter where the allegations made in the First Information Report or the complainant, even if they are taken at their face value and accepted, do not prima facie constitute or make out a case against the petitioner-Rishi. This is also a case 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 offense to make out a case against the petitioner-Rishi. Further, having regard to the Deed of Settlement And Release dated 03.12.2018, to which the complainant-respondent No.3 is a party/signatory, the vague allegations made against the petitioner-Rishi appear to be inherently probable and suggest that there are no sufficient grounds for proceeding against the petitioner-Rishi. At least qua the petitioner-Rishi, at the highest, this is some civil dispute arising out of breach of contract and the complainant-respondent No.3 cannot be permitted to enforce her demands through the criminal process. Accordingly, we are satisfied that this is a fit case for exercise of inherent power under Section 482 of the IPC and to quash the impugned FIR and the proceedings in pursuance of such impugned FIR qua the petitioner-Rishi.

***22.*** Accordingly, we make the Rule in this petition absolute and quash the FIR bearing No.144 of 2019 and the consequent criminal proceedings initiated in the Court of the Judicial

Magistrate First Class, Mapusa qua the petitioner. There shall be no order for costs.

**SMT. M. S. JAWALKAR, J.** **M. S. SONAK, J.**