IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRI. WRIT PETITION NO. 261 OF 2021

Vishwajeet Subhash Jhavar ....Petitioner

...Vs...

State of Maharashtra & one anr. ....Respondents.

Mr. Amit A. Gharte, Advocate for the Petitioner.

Mr. S.R.Shinde, A.P.P. for respondent No.1-State.

Mr. Vishal Kanade, Advocate a/w Mr.Krishnan Iyer, Ms Vinasha Acharya i/b Ms Namrata Agashe, Advocates for respondent No.2.

CORAM: S.S. SHINDE & MANISH PITALE, JJ.

RESERVED ON : 25.03.2021.

PRONOUNCED ON: 20.04.2021.

JUDGMENT (Per : Manish Pitale, J.)

1. By this petition, the petitioner seeks quashing of First Information Report (FIR) registered against him and others for offences punishable under sections 420, 409 and 406 read with

section 34 of the Indian Penal Code (IPC), as also provisions of the Maharashtra Protection of Investor Depositors Act (MPID Act) and Maharashtra Ownership of Flats Act (MOFA).

2. The said FIR stood registered on 23.10.2019, at the behest of respondent No.2 (original informant). The said Respondent is Director of a private limited company, which desired to purchase property and accordingly entered into an agreement with Marvel Homes Sigma Private Limited, of which the petitioner is a Director. As per the agreement between the parties, the total consideration for the said apartment was ₹6,82,48,500/-. It is an admitted position that the respondent No.2 transferred amounts in favour of the company of the petitioner as per the agreement. The said amounts came to a total of ₹3,89,36,645/-. As per the agreement, the possession was to be handed over to respondent No.2 on 30.09.2017. It is also an admitted position that the petitioner failed to hand over possession despite such huge amount received from respondent No.2 and despite the fact that respondent No.2 was repeatedly pursuing the matter with the petitioner.

3. The respondent No.2 had filed a proceeding before the Maharashtra Real Estate Regulatory Authority for his grievances, but, by order dated 16.08.2018, the said complaint was dismissed. Aggrieved by the same, the respondent No.2 approached the Appellate Tribunal. By order dated 17.09.2019, the Appellate Tribunal set aside the impugned order and remanded the matter back to the regulatory authority. The respondent No.2 approached the police station at this stage stating the aforesaid facts and claimed that the petitioner had committed acts amounting to cognizable offences and on the basis of the information provided to the police, the aforesaid FIR dated 23.10.2019 stood registered against the petitioner and others.

4. In this backdrop, the petitioner stated that he wanted to settle the matter with the respondent No.2 and accordingly, a Memorandum of Understanding (MoU) recording consent terms between the parties was executed on 17.12.2019. In pursuance of the said MoU, the petitioner did pay certain amounts to the respondent No.2. An amount of ₹ 1,37,00,000/- was paid and thereafter a cheque for an amount of ₹ 63,00,000/- was issued in favour of respondent No.2. Initially the said cheque was

dishonoured. Thereafter, on being presented again, the said cheque was honoured. But, thereafter the cheques issued by the petitioner were all dishonoured and the petitioner failed to abide by his promises made from time to time to respondent No.2.

5. In this situation, when it became evident that the petitioner was not abiding by his own promises and huge amount was due from him to the respondent No.2, a notice dated 01.09.2020, was issued by the respondent No.1-State through the investigating officer under section 160 of the CrPC to the petitioner. Aggrieved by the same, the petitioner filed the present Writ Petition seeking quashing of the said FIR, as also the notice issued under section 160 of the CrPC. This Court issued notice in the present Writ Petition, in response to which reply affidavit was placed on record by the respondent No.2. The said Respondent opposed the prayers made in the Writ Petition.

6. Mr. Amit A. Gharte, learned counsel appearing on behalf of the petitioner, submitted that the present Writ Petition deserved to be allowed, because the dispute between the parties was of civil nature and that the respondent No.2 was wrongly seeking to give

it the colour of criminal proceeding, only in order to recover amounts from the petitioner. It was submitted that the petitioner had indeed paid some amounts in pursuance of the said MoU and only because further amount was due from him, the proceedings in pursuance of the said FIR could not be permitted to continue. It was submitted that the respondent No.2 could avail of remedies available under civil law for recovery of the amount and criminal proceedings for the purposes of such recovery ought not to be permitted.

7. On this basis, it was submitted that the ingredients of the alleged offences under sections 420, 409 and 406 of the IPC were not made out, particularly when the respondent No.2 had already initiated proceedings under the provisions of the Negotiable Instruments Act for dishonour of cheques issued by the petitioner. The learned counsel for the petitioner relied upon judgments of the Hon'ble Supreme Court and this Court, to support the said contentions. The said judgments would be referred to herein below, while considering the contentions raised on behalf the petitioner.

8. Mr. Vishal Kanade, learned counsel appearing for respondent No.2, submitted that the contentions raised on behalf of the petitioner were fallacious, for the reason that the respondent No.2 had specifically stated in the report lodged with the Police, specifying the manner in which the petitioner had lured the respondent No.2 to enter into the aforesaid agreement and how huge amounts were received by the petitioner. It was submitted that after registration of the FIR, the petitioner had come forward and entered into the aforesaid MoU, the terms of which were also not honoured by him. All these activities of the petitioner clearly demonstrated that from the initial stage, the petitioner had acted in a manner which *prima facie* divulged ingredients of the aforesaid offences under sections 420, 409 and 406 of the IPC. The counsel for respondent No.2 referred to the report submitted to the Police leading to registration of the FIR. By reading the contents of the same, it was emphasized that ingredients of the said offences were *prima facie* made out and that therefore, the FIR could not be quashed and the investigation ought not to be stalled.

9. It was further submitted that the petitioner was not justified in claiming that the dispute in the present matter was only of civil nature. It was also submitted that merely because the respondent No.2 had initiated proceedings under the provisions of the Negotiable Instruments Act, he could not be disentitled from pursuing the proceedings initiated on the basis of the said FIR. The investigating officer could certainly not be stopped from carrying out investigation in the facts and circumstances of the present case. According to the learned counsel for respondent No.2, the judgments relied upon by the learned counsel for the petitioner, were clearly distinguishable on facts.

10. A perusal of the material on record shows that in the present case the petitioner had indeed received huge amounts in pursuance of the agreement entered into with respondent No.2. This is not disputed by the petitioner. Despite the said respondent pursuing the matter, the petitioner and his company had failed to hand over possession of the apartment by the agreed date of 30.09.2017 and even thereafter till date. It is relevant that respondent No.2, in his complaint before the police stated in detail how the petitioner lured him into executing the said

agreement and how despite receiving huge amounts, the petitioner failed to take any steps in the matter to satisfy the grievances of respondent No.2. A perusal of the material on record shows that during the course of investigation into the matter, the petitioner gave an impression to respondent No.2 that the amounts due would be returned along with simple interest and accordingly the said MoU was executed. Some amounts were indeed paid under the MoU, but thereafter admittedly no further amounts were paid and cheques issued by the petitioner were dishonoured.

11. The material on record therefore, *prima facie* indicates that the petitioner not only induced respondent No.2 to part with huge amounts on the promise of the apartment being constructed and handed over to him, but even thereafter an impression was given to respondent No.2 that the amounts due would be returned with interest. Such amount in pursuance of the MoU was only partly returned and cheques pertaining to substantial amounts were dishonoured, thereby *prima facie* indicating that the petitioner knew fully well that he would not be able to abide by the conditions of the MoU and yet proceeded to issue cheques,

which admittedly stood dishonoured. Merely because the respondent No.2 has initiated proceedings under the provisions of the Negotiable Instruments Act in respect of dishonour of such cheques, it cannot be said that the proceedings in pursuance of the aforesaid FIR deserve to be quashed.

12. It is in this backdrop that the investigating officer issued notice to the petitioner. It cannot be said that the investigating officer committed any error in doing so, particularly when the FIR stood registered as the information provided to the Police *prima facie* disclosed cognizable offences and as per settled law, the registration of FIR was justified. Insofar as the contention of the petitioner that the dispute between the parties in the present case is purely of civil nature, suffice it to say that even if a civil proceeding could have been initiated by respondent No.2, that in itself would not disentitle him from placing information before the Police which *prima facie* divulged cognizable offences.

13. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of ***R.A. Kapur Vs. State of Punjab***, reported in ***AIR 1960 SC 866***. But, the said

judgment cannot be of assistance to the petitioner for the reason that it is observed therein that if institution or continuance of criminal proceedings amounts to abuse of the process of the Court then such proceedings can be quashed. It is also observed that where contents of the report or complaint at their face value and accepted in their entirety, do not constitute the alleged offence, the criminal proceedings can be quashed. As noted above, such is not the case in the present matter for the reason that ingredients of the alleged offences are found to be *prima facie* present in the facts and circumstances of the case. Insofar as judgment of the Hon'ble Supreme Court in the case of ***Anand Mohatta Vs. State (NCT of Delhi)***, reported in ***2019 (4) Mh.L.J. (Cri) 247*** is concerned, it was held therein on facts that the Appellants had not misappropriated the amount in question and that the dispute between the parties was found to be of civil nature. In our view, the said judgment also does not come to the aid of the petitioner herein.

14. The judgment of the Hon'ble Supreme Court relied upon by the petitioner in the case of ***Rajeshbhai Patel Vs. State of Gujarat***, reported in ***(2020) 3 SCC 794***, pertains to a situation

where issues of genuineness of documents and alleged forgery were pending before the civil Court and in that context, it was held that criminal proceedings would not be sustainable. Such is not the situation in the present case, because in this case huge amounts were paid in pursuance of an admitted agreement between the parties and the petitioner neither took any steps to hand over possession of the apartment, nor did he return the amount along with agreed interest. In fact, cheques were issued ostensibly to return the promised amount and even those cheques were dishonoured. Hence, the aforesaid judgment is also distinguishable on facts. Learned APP is right in her submission that the petitioners have not only cheated the informant in the present case but other customers also.

15. Insofar as the judgment of this Court in the case of ***Jitendra Joshi Vs. State of Maharashtra***, reported in ***2011 (3) MhLJ (Cri) 637,*** is concerned, it was found on facts that there was a pure civil dispute between the parties and therefore, the proceedings could not be permitted to be continued. In the case of ***Rohan Dukle Vs. State of Maharashtra***, reported in ***2020 (1) Mh.L.J. (Cri) 345***, it was found that in the MoU in that case, there

was an arbitration clause and a mechanism was provided for resolving the dispute, thereby indicating that criminal proceedings ought not to continue. In the case of ***Nilesh Shah Vs. Officer in Charge***, reported in ***2017 (4) Mh.L.J. (Cri) 340***, the complaint itself was lodged after huge delay and there was a civil suit filed in which a counter claim was also filed by the defendant. In such circumstances, it was found that criminal prosecution ought not to be permitted.

16. All the aforesaid judgments Court are clearly distinguishable on facts. As noted above, in the present case the report launched by the respondent No.2 *prima facie* divulged cognizable offences against the petitioner and others. The petitioner further entered into the MoU, *prima facie* with the full knowledge that he was not intending to abide by the terms, thereby showing that continuance of such criminal proceedings and issuance of notice by the investigating officer could not be found fault with. It is submitted by the learned APP that in other similar cases, the petitioners have cheated other customers also.

17. In view of the above, we are not inclined to grant the prayers in the present Writ Petition. Accordingly, it is dismissed. It is clarified that the observations made hereinabove are confined to the case in hand only and further such observations shall not be construed as an impediment to the parties to explore possibility of settlement of the dispute amicably.

(MANISH PITALE, J.) **(S.S.SHINDE, J.)**