

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 4317 OF 2004**

Umashankar Prabhudayal Khandelwal & Anr.Applicants.

Vs.

Mr. Ratna Samy Elango & Ors.Respondents.

Mr. Shekhar Ingawale for the Applicants.

Mr. S.S. Hulke, APP for the Respondent-State.

None for the Respondent No.1.

CORAM : A. S. GADKARI, J.

DATE : 9th FEBRUARY, 2021.

ORAL JUDGMENT:-

By the present Application under Section 482 of the Code of Criminal Procedure, 1973 (for short, '*the Cr.P.C.*'), the Applicants-Original Accused Nos.1 and 2 in Criminal Case No.06-I & R/04 pending on the file of the learned Additional Chief Metropolitan Magistrate, 29th Court, Bhoiwada, Dadar, Mumbai, have prayed for quashing of the said complaint filed by Respondent No.1 and further proceedings thereof, in pursuance of Order dated 6th August, 2004 passed by the Additional Chief Metropolitan Magistrate.

2 Respondent No.1 is duly served and an Advocate has caused appearance on his behalf. The present Application was called out for hearing on 28th January, 2021, when none appeared for the Respondent No.1 and therefore, it was adjourned for hearing to 8th February, 2021. On

8th February, 2021, also none appeared for the Respondent No.1. Today also, none appears for Respondent No.1.

3 Heard Mr. Ingawale, learned counsel for the Applicant and learned APP for the Respondent-State. Perused the record annexed to the Application.

4 The record reveals that, the Respondent No.1 has filed the aforestated Complaint against the Applicants and three other persons for initiating criminal prosecution under Sections 406, 418, 409, 420 and 426 read with Section 34 of the Indian Penal Code and for directing the police to register First Information Report according to Section 156(3) of the Cr. P.C. and to investigate the said crime.

5 It is the precise case of the Respondent No.1/ Complainant that, he entered into an Agreement dated 5th January, 2002 with the Applicants for supply of goods more specifically mentioned in the said contract. In pursuance of the said contract, the Applicants were to manufacture and then supply P/V (Dyed Yarn) finished fabric, with cut border to the Complainant. That, the said fabric manufactured by the Applicants was of substandard quality and not as per the agreed terms of the contract. That, though the Complainant paid an advance of Rs.31 lacs, he did not get the desired quality of goods. That, the Applicants sold the said manufactured goods to the Original Accused Nos.3, 4 and 5, who runs a business in the name and style of "*Banbury Exports Private Limited*". It is

therefore contended that, the Applicants have committed the aforesaid offences and are liable to be punished accordingly.

Learned Magistrate by its Order dated 6th August, 2004, was pleased to forward the said Complaint to Economic Branch of Crime Branch to investigate it under Section 156(3) of the Code of Criminal Procedure and submit its report to the Court for taking further action/cognizance.

6 The record further indicates that, after the business relations between the Applicants and Respondent No.1 got sour, particularly due to alleged non-supply of proper quality of goods by the Applicants, the Respondent No.1 initially lodged a Complaint on 25th June, 2002, with the Deputy Commissioner of Police, Mumbai. The Complainant also sent a communication dated 29th August, 2002, to the Applicants intimating that, he has lodged a Complaint with the Deputy Commissioner of Police, Mumbai and called upon the Applicants to pay his dues within a period of 15 days.

It appears from record that, as the concerned police did not take cognizance of the said Complaint, the Respondent No.1 again filed a Complaint dated 12th October, 2002, with the Deputy Commissioner of Police (EOW), Mumbai by increasing his alleged claim to Rs.41.80 lacs and has requested the concerned Authority to take immediate action in the matter to recover the said amount. The Complaint dated 12th October, 2002 was taken note of by the concerned Authority and the Senior Inspector of

Police, EOW Unit-I, Crime Branch, CID, Mumbai was directed to look into the allegations of Respondent No.1. The Senior Inspector of Police, EOW Unit-I, by his letter dated 29th March, 2004, intimated to the Respondent No.1 that, a preliminary inquiry was conducted by the concerned Department and it was found that, the dispute between the Respondent No.1 and the Applicants is of Civil nature. It was also intimated to the Respondent No.1 that, the inquiry was therefore closed.

7 In this background, the aforestated Complaint has been filed by the Respondent No.1. It clearly appears from the record that, even the police attached to the EOW, Unit-I, Crime Branch, CID, Mumbai found that, the dispute *inter-se* between the Applicants and Respondent No.1 was of Civil nature. Respondent No.1 has not mentioned the said fact of his filing of various Complaints with the police prior to filing of the present Complaint in question on 6th August, 2004 and has rather suppressed the said facts. It further appears that, as the Respondent No.1 did not succeed in recovering his alleged dues from the Applicants and/or other accused persons, he has filed the present Complaint for the same. The present Complaint filed by the Respondent No.1 is only for recovery of the said amount under the guise of initiation of criminal prosecution against the Applicants and none else.

8 Even otherwise, bare perusal of complaint clearly indicates that, it is the case of a pure breach of contract and the Respondent No.1

was having remedy in Civil Court.

It is the settled position of law that, mere breach of contract cannot give rise for initiation of criminal prosecution for cheating. For constituting an offence under Section 420 of the Indian Penal Code, fraudulent and dishonest intention must be shown to be existing from the very beginning of the transaction. Reliance is placed on the decision of the Supreme Court in the case of *Anil Mahajan Vs. Bhor Industries Ltd. & Anr.* reported in (2005) 10 SCC 228. The said vital ingredient is absent in the present Complaint. It clearly appears that, there was no fraudulent intention at the behest of the Applicants herein to commit the act of cheating and/or to defraud Respondent No.1 for his monetary consideration. As noted earlier, the Respondent No.1 in para No. 5 of his Complaint has categorically admitted that, though the Applicants herein manufactured the said fabric, it was not as per his requirement. If the Applicants, since inception, would have been having the intention to commit the act of cheating or criminal breach of trust, they would not have at all manufactured the said fabric and in that eventuality, there would not have been further question of Original Accused Nos. 3 to 5, purchasing the same after its rejection by the Respondent No.1.

9 In view of the above, this Court is of the considered opinion that, the Complaint filed by the Respondent No.1 was filed with malafide intention, only to recover the alleged losses suffered by Respondent No.1

arising out of breach of contract dated 5th January, 2002, and nothing else.

The Applicants therefore, succeed.

Application is accordingly allowed in terms of prayer clause (b).

Sanjiv S.
Mashalkar

Digitally signed by
Sanjiv S. Mashalkar
Date: 2021.02.23
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(A.S. GADKARI, J.)