IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APPLN) NO. 7320 OF 2005

1.	Nityakrishna Goyal an adult male of Mumbai, Indian inhabitant, aged 65 years, having his office at 90, MIDC, 7 Street, Andheri (East), Mumbai – 400 093	]	
2.	Amit Nityakrishna Goyal an adult of Mumbai, Indian inhabitant, aged 45 years, having his office at 90, MIDC, 7 Street, Andheri (East), Mumbai – 400 093	]	… Applicants

V/s.

1.	The State of Maharashtra	]	
2.	Rohit Kandhari Director of M/s. Brillanto Textile Mills Private Limited, having its Office at Plot No. 61, Road No.13, MIDC, Andheri (East), Mumbai – 400 093 and Factory at C-4/1/1 Tarapore Industrial Area, Boisar (Western Railway), District Thane.	]	… Respondents

Mr.Karan Kadam and Ms.Deepa Shetty i/b. Nankani & Associates for Applicants.
Mr.Amit Palkar, A.P.P. for Respondent No.1-State.
Mr.Dharmendra Rohra for Respondent No.2.

CORAM : A.S. GADKARI, J.
DATE : 11th February 2021.

JUDGMENT :

By the present application under Section 482 of the Code of Criminal Procedure, the applicants, original accused Nos.1 and 2, have prayed for quashing and setting aside complaint i.e. Criminal Case No. 220 of 2005 pending on the file of Judicial Magistrate First Class, Palghar.

2. Heard Mr.Kadam, learned counsel for the applicants, Mr.Palkar, learned A.P.P. for the respondent No.1-State and Mr.Rohra, learned counsel for the respondent No.2-original complainant. Perused record annexed to the application and produced by the learned counsel for the applicants.

3. Record reveals that, the respondent No.2 has instituted a complaint under Sections 418, 420, 504, 506 read with 34 of the Indian Penal Code against the applicants and two other persons. The case of the respondent No.2 in nutshell is that, at the instance of the applicants and due to the intervention of original accused No.3 Ashwin Shah (Broker in transaction), the respondent No.2 supplied grey yarn (base fabric) to the accused No.4 Kirti Shah, proprietor of M/s.Textile World, Kalbadevi, Mumbai. That, the accused No.4 Kirti Shah after accepting its liability for printed yarn in furtherance of invoices/bills issued in favour of the said M/s.Textile World,

totaling amount of Rs.5,22,071/-, had made part payment of Rs.61,451/- to respondent No.2-complainant by a cheque drawn on Cosmos Cooperative Bank, Pune, dated 16th January 2005. However, it was dishonored on presentation. As the said Order of supply of goods was accepted by the respondent No.2 for supply of goods to M/s.Textile World at the instance of the applicants, the respondent No.2 complainant approached the applicants, who flatly refused to make the said payment stating that, they have accepted goods from M/s.Textile World and have made payment to it in that behalf.

4. Learned Magistrate thereafter issued an Order under Section 156(3) of the Cr.P.C., which was communicated to the Police Officer attached to Boisar Police Station by an Outward Letter dated 14th September 2005 by the Registry of the learned Magistrate. The concerned Police Officer instead of conducting investigation, conducted inquiry into the matter and submitted its elaborate report dated 17th October 2005 to the learned Magistrate. The said report mentions that, the applicants herein have told that, they have made payment of Rs.16,40,000/- to Mr.Kirti Shah of M/s.Textile World. The Trial Court after perusing the said report and accepting the statements made therein was pleased to issue process against the applicants and other two accused persons under Section 418 and 420 read with Section 34 of the Indian Penal Code by its Order dated 18th October 2005.

5. Before proceeding further, it is necessary to note the inter-se relationship between the respondent No.2-complainant and accused persons. The respondent No.2/complainant is the manufacturer of gray-yarn (base fabric). The original accused No.4 i.e. Mr.Kirti Shah of M/s.Textile World is the printer of the said yarn. The applicants are owners of M/s.Sarju International. The said M/s.Sarju International through original accused No.3 Ashwin Shah (a broker in market) used to place orders with accused No.4 M/s.Textile World. The accused No.4 M/s.Textile World used to supply finished product i.e. printed yarn to the applicants firm, namely, M/s. Sarju International.

6. Now coming to the pleadings in the plaint, the complainant himself has stated that, the applicants herein told him that they had purchased the goods in question from M/s. Textile Company (accused No.4) and proprietor of the said company Mr.Kirti Shah would make payment of the same. It is further stated that, the accused No.4 Kirti Shah had given a cheque of Rs.61,451/- drawn on Cosmos Co-operative Bank, Pune, towards part of his liability, which was dishonoured on presentation. It is to be noted here that, at the time of filing of complaint, the complainant has not annexed any document to indicate that, the applicants had at any point of time issued him instructions to supply goods on their behalf or at their instance to accused No.4, M/s. Textile World. Except bald submissions made in the complaint, no

contemporaneous record has been produced by the complainant along with the complaint before the Trial Court. The complainant even has not even mentioned list of witnesses to be examined by him at the time of trial of the said complaint. The complaint itself mentions that, it is the accused No.4 Mr.Kirti Shah who had privy of contract with the complainant who had supplied goods to the said accused between 28th October 2004 to 9th November 2004, by raising seven invoices/bills in that behalf.

7. It is to be noted here that, by a communication dated 14th September 2005, the Trial Court had directed the Police Officer attached to Bhoisar Police Station to conduct investigation under Section 156(3) of Cr.P.C.. However, the concerned Police Officer conducted inquiry and submitted its report dated 17th October 2005 without filing Final Report under Section 173(2) of Cr.P.C. in the matter. The statements of accused persons/applicants herein were recorded by the Police Officer during the course of investigation in police station, therefore are hit by Sections 25 and 26 of the Indian Evidence Act and the Trial Court ought not have accepted those statements as gospel truth before taking cognizance by its Order dated 18th October 2005.

8. The record further reveals that, the respondent No.2 itself in its letter dated 8th April 2005 addressed to M/s. Sarju Internation, has stated that, under the instructions of applicants, it raised invoices in the name of

M/s. Textile World. It is thus clear that, the privy of contract was directly between the respondent No.2 and accused No.4 M/s. Textile World and the applicants have nothing todo with the same.

9. It further appears to this Court that, a pure and simple business transaction after it got murky, has been given a shade of criminality by filing the present complaint, for recovery of dues by the respondent No.2 from the accused No.4. Even otherwise, bare perusal of complaint clearly indicates that, it is the case of pure breach of contract and the respondent No.2 was having remedy in Civil Court.

It is 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 I.P.C. fraudulent and dishonest intention must be shown to be existing from the very beginning of the transaction. Reliance is placed on the decision of Hon'ble Supreme Court in the case of *Anil Mahajan Vs. Bhor Industries Ltd. & Another, reported in (2005) 10 SCC 228.*

It further 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.2 for his monetary consideration.

10. In view of the above, this Court is of the opinion that, no case at all as against the applicants is made out to proceed with under Section 418

and 420 read with Section 34 of the Indian Penal Code. The Order dated 18th October 2005 passed by the Judicial Magistrate First Class, Palghar, so also the complaint No. 220 of 2005 pending on the file of Judicial Magistrate First Class, Palghar is accordingly quashed and set-aside qua the applicants.

11. Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]

Omkar S. Kumbhakarn

Digitally signed by Omkar S. Kumbhakarn
Date: 2021.02.26 10:28:35 +0530