

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 115 OF 2012

- 1) Sanjay s/o Nandkishor Agrawal,
Aged about 41 years,
Occupation – Business,
- 2) Nandkishor s/o Ramchandra Agrawal – Abated as per
Aged about 69 years, Order dt. 22-8-17.
Occupation – Business.

Both R/o 55/1, M.I.D.C., Amravati,
Tahsil and District Amravati.

- 3) Rameshwar s/o Shivprasadji Gagad,
Aged about 49 years,
Occupation – Business,
R/o Sakkarsath, Amravati, Tahsil and
District Amravati.

.... **PETITIONERS**

VERSUS

- 1) State of Maharashtra,
through Ministry of Law and Judiciary,
Mantralaya, Mumbai.
- 2) Anil s/o Damodhardasji Mokati,
Aged about 49 years,
Occupation – Business,
R/o Nachangaon Road, Pulgaon,
Tahsil – Deoli, District – Wardha.

.... **RESPONDENTS**

Mr. S.G. Shukla, Counsel for the petitioners,
Mr. N.R. Rode, Addl.P.P. for respondent 1/State,
Mr. C.F. Bhagwani, Counsel for respondent 2.

CORAM : ROHIT B. DEO, J.
DATED : 10th FEBRUARY, 2021

ORAL JUDGMENT :

The petitioners were arraigned as accused in Criminal Complaint Case 51/2009 instituted by respondent 2 under Sections 406 and 420 read with Section 34 of the Indian Penal Code.

2. Petitioner 2-Nandkishor Agrawal expired during the pendency of the petition.

3. The learned Magistrate took cognizance of the complaint vide order dated 15-3-2010 and directed issuance of summons. Record reveals that initially the learned Magistrate did not issue the process and found it necessary to direct an enquiry under Section 202(1) of the Criminal Procedure Code (Code). The enquiry report exonerated petitioner 2-Mr. Nandkishor Agrawal and further recorded that the dispute is of civil nature. The learned Magistrate reasoned that having regard to the allegations made in the complaint against all the three accused and the documents filed on record, a *prima facie* case is made out.

4. The petitioners, who shall be hereinafter referred to as the

accused, approached the revisional Court in Criminal Revision 89/2010 which is partly allowed by the learned Additional Sessions Judge-2, Wardha.

5. While the process issued under Section 406 of the Indian Penal Code is quashed, the issuance of process under Section 420 read with Section 34 of the Indian Penal Code is confirmed.

6. The accused are aggrieved by the order of issuance of process and the revisional order to the extent the issuance of process under Section 420 read with Section 34 of the Indian Penal Code is not interfered with.

7. Perusal of the complaint reveals that the substratum of the allegations is that accused 1-Mr. Sanjay Agrawal and accused 2-Rameshwar Gagad colluded in introducing accused 1 as the sole proprietor of M/s. Agrawal Trading Company and M/s. Harikrishna Traders, Amravati with the intention of deceiving the complainant and his father to induce them to deliver goods on credit. It is alleged that the complainant and his father were induced to deliver goods worth Rs.9,11,072/- to M/s. Agrawal Trading Company and Rs.7,62,778/- to M/s. Ramakrishna Traders. The next relevant allegation is that the

accused did not pay the entire price of the goods and the complainant was constrained to institute Special Civil Suit 21/2005 and Special Civil Suit 23/2005 for recovery of the balance due and payable. The complainant alleges that the stand taken by the accused in the said suits reveals that the accused claimed to be unconnected with the two proprietary concerns.

8. It would be necessary to make a reference to the fate of the two civil suits. It is not in dispute that by separate judgments and decree the learned Civil Judge dismissed the aforesaid suits. A finding is recorded that the complainant-the plaintiff in the civil suits, did not prove that he delivered the goods in question to the accused, the defendant in the civil suits. A further finding is recorded that the complainant-plaintiff failed to prove the existence of M/s. Harikrishna Traders, Amravati or that any accused was a proprietor thereof. The complainant assailed the judgments in the civil suits in First Appeal 296/2012 and First Appeal 297/2012, which came to be dismissed by the appellate Court. It is further not in dispute that an unsuccessful attempt was made to assail the concurrent findings in second appeal/s which this Court did not entertain.

9. In my considered view, the submission of the learned Counsel

Mr. Shukla that continuation of the proceedings in the criminal complaint shall be an abuse of the process of law, deserves acceptance.

10. The very edifice of the complaint is that the complainant was induced to supply goods on credit. The alleged false representation would pale into insignificance unless the complainant is in a position to show that induced by the false representation he parted with goods on credit. The finding recorded by the civil Court in a full-fledged trial would operate as an issue estoppel or principle analogous thereto. In this view of the matter, continuation of the trial shall only be a ritualistic formality and forcing the accused to face such trial as an empty formality shall be nothing short of the abuse of the process of law.

11. In my considered view, the order of issuance of process and the Criminal Complaint Case 51/2009 deserve to be quashed, and are accordingly quashed.

12. Rule is made absolute in terms of prayer clause (i) which reads thus :

“(i) It is therefore prayed that this Hon’ble Court be pleased to issue appropriate writ, order, direction to quash and set aside order dated 15-3-2005 passed by JMFC, Pulgaon for

issuing process u/s 420 r/w 34 of IPC against petitioners in Criminal Complaint Case no. 51/2009, order being illegal, improper and bad in law and abusing process of law, as filed at Annexure "A", and please to quash and set aside order dated 28-6-2011 passed in Criminal Revision No. 89/2010 by Additional Sessions Judge-2, Wardha for maintaining order of issue of summons for the offences punishable u/s. 420 r/w 34 of IPC against petitioners, passed by JMFC, Pulgaon in Criminal Complaint Case No. 51/2009, being illegal, improper and bad in law, by allowing the instant petition and thereby please to dismiss the Criminal Complaint Case No. 51/2009 pending before JMFC, Pulgaon filed by the complainant/respondent no.2, in the interest of justice."

JUDGE

adgokar