

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

910 CRIMINAL APPLICATION NO.2720 OF 2022

**KISAN GABAJI PAWAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Advocate for Applicants : Mr. Amit S. Savale
APP for Respondent/State : Mr. S. J. Salgare
...

**CORAM : SMT. VIBHA KANKANWADI
AND
RAJESH S. PATIL, JJ.**

DATE : SEPTEMBER 06, 2022

PER COURT : -

1. Present application has been filed invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashment of the FIR vide C.R. No. 148/2022 dated 09.06.2022 registered at Taloda Police Station, Dist. Nandurbar, for the offence punishable under Section 420 r/w 34 of the Indian Penal Code.

2. Heard learned advocate Mr. Amit Sawale for the applicants and learned APP Mr. S. J. Salgare for respondent/State. It is not even necessary to issue notice to respondent no. 2.

3. Perusal of the FIR lodged by respondent no. 2 would

show that the applicants are doing business of fruits. They are carrying out the said business under the name and style as ‘Shri. Krishna Fruits Suppliers and Commission Agent Company’ at Kheddigar, Tq. Shahada, Dist. Nandurbar. The informant says that, he had been supplying Banana grown in his field to the applicants for last ten years. He further stated that in the year 2021, he had supplied the Banana worth Rs. 70.00 lakhs to the applicants but he has received only Rs. 21.00 lakhs. Amount of Rs. 49.00 lakhs is outstanding. He then says that he gave a complaint to the Taloda Police Station and thereafter on four occasions, the applicants had given him amount of Rs. 6.00 lakhs. The outstanding amount is Rs. 43.00 lakhs. When he asked the applicants to pay the outstanding amount, they avoided it on one or the other pretext. He then says that he has been cheated.

4. Learned advocate appearing for the applicants submits that the transaction which has been stated in the FIR is exclusively civil in nature and it does not attract criminal liability. It would be unjust to ask the applicants to face the trial and, therefore, he prays for quashment of the FIR.

5. Per contra, the learned APP submits that the investigation is at a very initial stage and only on the basis of the FIR it cannot be stated that the applicants had no intention to cheat the informant.

6. It is definitely a settled principle of law that a

transaction made give rise either to civil liability or criminal liability then in that case it is for the Court to see the things minutely. If a transaction is disclosing the civil liability then such FIR and/or the charge-sheet may be quashed. Here in this case, FIR has been lodged on 09.06.2022. In the FIR, as aforesaid, it has been stated that the total goods which were supplied in the year 2021 by the informant to the applicants is to the tune of Rs.70.00 lakhs and initially he had received an amount of Rs.21.00 lakhs only. He then specifically states that after he had given complaint to the Police Station, the applicants have further paid him Rs. 6.00 lakhs in four parts. How this action on the part of the applicants is to be viewed, will have to be considered because the payments are made only after the informant had approached the Police Station. We may take help of the observations in the case of **Sheikh Jahangir Ali vs. State of Maharashtra** reported in 2001 (1) Mh.L.J. 67, wherein this Court had observed “motive is always locked in the heart of the accused and it is well known dictum that even devil may not know the thoughts of man. Motive, no doubt, assumes importance in a case resting on circumstantial evidence, yet the absence of motive is not fatal if the circumstantial evidence is established with cogent evidence. No doubt, these observations are in respect of how to appreciate a case which is resting on circumstantial evidence which speaks for the motive which is locked in the heart of the accused. It would be a premature stage, therefore, to quash the FIR only on the basis of FIR in view of the contents. The accounts kept by the informant will have to be then collected so also it is required to be seen as to

whether the applicants have maintained the accounts. In the present application, there are absolutely no averments stating that such goods were received by them and such payments were made by them thereby they are not admitting that any outstanding amount has to be paid by them to the informant. The applicants have also not expressed that they have intention to pay the amount on a later point of time. Under such circumstance, in fact the applicants ought to have waited for collection of evidence and filing of charge-sheet.

7. Since the case is not exclusively coming within the parameters of **State of Haryana and Ors. vs. Ch. Bhajan Lal and Ors.** reported in 1992 AIR 604, this is not a fit case where we should exercise our inherent powers for quashment of FIR.

8. Criminal Application stands rejected.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE