IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.651 OF 2020

Prakash Vadilal Shah ...Petitioner
Versus
State of Maharashtra and Anr. ...Respondents

Mr. Amit J. Pai, for the Petitioner.

Mr. A. R. Patil, A.P.P for the Respondent No.1– State.

Mr. Akash Kavade, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 24th JANUARY 2022

(THROUGH VIDEO CONFERENCING)

P.C. :

1. Heard learned counsel for the parties.

2. By this petition, the petitioner has impugned the order dated 8th March 2019, passed by the learned Additional Chief Metropolitan Magistrate, 2nd Court, Mazgaon, at Sewree, Mumbai, below Exhibit – 22 in C.C. No.227/SW/2006, by which the petitioner's application (Exhibit -22) seeking his discharge under Section 245 of Code of Criminal Procedure,

came to be rejected, as well as the order dated 20th January 2020, passed by the learned Additional Sessions Judge, Greater Mumbai, in Criminal Revision Application No.645 of 2019, rejecting the petitioner's revision application and as such confirming the order of the trial Court.

3. Learned Counsel for the petitioner submits that the evidence on record does not reveal the ingredients of cheating, as alleged by the complainant. He submits that since no offence as alleged is made out, the petitioner be discharged from the said case. Learned Counsel submits that the dispute/transaction in question, is civil in nature, which has been given the colour of a criminal prosecution. He submits that having regard to the aforesaid, the learned Judge ought to have discharged the petitioner from the alleged offence punishable under Section 420 of the Indian Penal Code, in the absence of any material that has come in the evidence of the respondent No.2– complainant.

4. Learned APP opposes the petition. Learned Counsel for the respondent No.2 also opposes the petition. Learned Counsel for the respondent No.2 submits that the complaint as well as the evidence on

record clearly shows that the respondent No.2 had advanced a sum of around 50 lakhs odd to the petitioner. He submits that no case was made out for discharging the petitioner under Section 245 Cr.PC.

5. Perused the papers. The respondent No.2 is the original complainant, who had filed a private complaint in June 2006 (being C.C. No.227/SW/2006) before the learned 2nd Metropolitan Magistrate Court at Mazgaon, at Sewree, Mumbai, as against the petitioner. The learned Magistrate issued process as against the petitioner for the alleged offence punishable under Section 420 of the Indian Penal Code. In the complaint filed by the respondent No.2, the respondent No.2 has set out in detail, how financial assistance was given by him to the petitioner, as he was in need of the same for developing his new venture and for running his business. The respondent No.2 in the said complaint has stated that believing that the financial assistance required by the petitioner was for a short time and that no sooner his business potentialities improve, the petitioner will return the money to the respondent No.2, monies were advanced on several occasions. The respondent No.2 has stated that believing the representation which were dishonest, the petitioner induced him to give him money for his

business. The respondent No.2 has stated that the intention to cheat was from the inception and that the petitioner had cheated various other people including the respondent No.2. Thus, according to the respondent No.2, the petitioner cheated him, for a sum of around 50 lakhs odd, pursuant to the inducement made by him.

6. The petitioner appeared before the learned trial Judge. Thereafter, the Court proceeded to record the examination-in-chief of the respondent No.2 in December 2014. The said Evidence Before Charge, so recorded by the trial Court is on page Nos. 27 and 28 of the petition. The trial Court deferred the cross-examination at the request of the learned counsel for the petitioner, reserving his right to cross-examine after framing of charge. It appears that the petitioner filed an application seeking his discharge from the said case under Section 245 Cr.PC. The learned Additional Chief Metropolitan Magistrate, 2nd Court, Mazgaon, at Sewree, Mumbai, rejected the said application vide order 8th March 2019. The petitioner challenged the said order in Revision before the Sessions Court. The learned Additional Sessions Judge, Greater Mumbai, after hearing the parties rejected the said application vide order dated 20th January 2020.

The said order is on page 40 of the petition. According to the learned counsel for the petitioner, no offence as alleged is disclosed under Section 420 of the Indian Penal Code, from a perusal of the evidence recorded of the respondent No.2. In the evidence, so recorded of the respondent No.2, the respondent No.2 has set out the amounts paid by him, on the petitioner's demand. The respondent No.2 has stated that the petitioner had assured him that he will receive a loan of Rs.50 lakhs from some NRI and that upon its receipt, he will repay the amount. He has also stated that he had borrowed certain amounts from his friends i.e. Rs.10 lakhs, and paid the petitioner. According to the respondent No.2, despite demanding the money back, the petitioner did not return the said amount. The learned Additional Chief Metropolitan Magistrate, vide order dated 8th March 2019, after considering the evidence has observed in para 9, as under:-

> *"9. In this case the allegations made in the complaint, evidence led by the complainant in support shows that the amounts were obtained by the accused from the complainant with certain promises, with certain intentions and he reluctant to repay it shows the intention of cheating. If in such situation the evidence on record is remained unrebutted, then the conviction would definitely warrant. Thus, I find no substance in the submissions of accused that there is no scope to frame the charge. With this, I answer point No. 1 and 2 accordingly and proceed to pass following order:-*

ORDER

The application filed below Ex.22 is rejected.”

7. The Revisional Court has also rejected the revision application after observing in para 12 of its order 20th January 2020, that in the instant case, the evidence before charge, *prima facie* is against the petitioner. No perversity can be found in both the orders, warranting interference in writ jurisdiction.

8. Accordingly, the Petition is dismissed and disposed of as such.

9. It is made clear, that the observations made herein are *prima facie,* and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.