

Mehmood Usman Ali	...	Applicant
Versus		
Veejay Mulchandani and another	...	Respondents

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Mr. Ali Kaashif Khan alongwith Mr. Shubham Shingade and Ms. S.A. Sayed and Ms. Riya Jain for the Applicant.
Mr. J.P. Yagnik, APP for the State.

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CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.

DATED : 4 JULY 2022

P.C. :-

Heard learned Counsel for the parties.

2. The Applicant has sought quashing of the FIR No.744 of 2021 registered with the Amboli Police Station under Sections 406, 420 read with 34 of Indian Penal Code.

3. The Respondent, in the FIR stated that in the year 2018, the Respondent-Complainant was contemplating of launching a Hindi Motion Picture. He took further action in that regard and learnt through an intermediary that the Applicant was keen to take the movie on an OTT Platform. According to Respondent-Complainant, that an agreement was made in the year 2020, wherein

the amount was fixed at Rs.1,25,00,000/-, out of which Rs.1,09,50,000/- was not given and cheques were issued which upon deposit, were dishonoured. According to Respondent-Complainant, right from the inception, the Applicant had no intention to pay the amount and with malafide intention had closed the bank account.

3. It was put to the Learned Counsel for the Applicant, whether the Applicant is ready for amicable resolution of dispute with the Respondent-Complainant, to which the learned counsel for the Applicant answered in the negative and proceeded to argue the matter on merits. It was then put to the learned Counsel whether the Petitioner would avail the remedy of discharge. However, the Petitioner has chosen to argue the Petition. The contention of the learned Counsel for the Applicant is that FIR discloses only a civil dispute with no criminality attached to it and that the bank Account was closed much prior and even though the Respondent was aware of it and presented the cheque and there is no dishonour. The learned Counsel submits that there are arbitration proceedings between the parties and in the case which is of civil nature, a criminal colour has been given.

5. In support of his submissions, the learned Counsel for the Applicant has relied upon the following decisions -

(i) Mahindra and Mahindra Financial Service Ltd. and

- others v. Rajiv¹;
- (ii) Veer Prakash Sharma v. Anil Kumar Agarwal and others²;
- (iii) Dalip Kaur and others v. Jagnar Singh and others³;
- (iv) Sanjay Kumar Sharda v. The State of Jharkhand and others⁴;
- (v) Prashant Mohan Nayak v. The State of Jharkhand and others⁵;
- (vi) Wolfgang Reim and others v. The State and others⁶;
- (vii) Dilip Singh v. State of Madhya Pradesh and others⁷;
- (viii) Ramesh Dahyalal Shah and others v. State of Maharashtra⁸; and
- (ix) Singanamala Ramesh Babu v. State⁹.

6. It is settled law that scope of proceedings for quashing of the prosecution at the inception is very limited and in exceptional circumstances. In the case of *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others*¹⁰, the Bench of three learned Judge of the Supreme Court, after taking review of the entire case law, has laid down parameters one of them is that FIR has to be read as it is and not the possible defence of the accused. The decisions learned Counsel sought to rely upon had rendered prior to the decision of *Neeharika Infrastructure Pvt. Ltd.* (supra).

1 MANU/SC/8354/2008

2 MANU/SC/7743/2007

3 MANU/SC/1139/2009

4 MANU/JH/0296/2020

5 Cr.M.P. No.451/2016

6 MANU/DE/4768/2012

7 MANU/SC/0089/2021

8 MANU/MH/3134/2017

9 Cri.O.P.No.10215/2015 and Cri.M.P. No.1/2015

10 2021 SCC Online SC 315

7. Thus, while considering the present Application for quashing of the FIR, the Court will have to look into statements made in the FIR and whether the FIR by reading of it discloses cognizable offence.

8. In the present case, the FIR states that pursuant to the Agreement, entire amount was not paid, the cheques were dishonoured and it is with the intention of cheating the Respondent that the bank account was closed. The cheques have been returned dishonoured. The factum of the agreement is not disputed before us. It cannot be said that the FIR, by perusal of it does not disclose any offence. Whatever is the defence of the Petitioner as regard the reason for dishonour of cheque would be for the Petitioner to prove at the time of trial. The allegation of the FIR is that the agreement was entered into without intention to pay the entire amount. The investigation is still going on. It is not the legal position that if there are civil proceedings between the parties, no FIR can be lodged nor there is any criminality. Therefore, this case cannot be considered as of extra ordinary circumstance to exercise inherent powers of this court.

9. The Application is rejected.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)