

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 104 OF 2023

DHARMARAJ BABURAO SHEVALE AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioners : Mr. Hon Ashwin Vinayak

APP for Respondent No.1/State : Mr. P. M. Kulkarni

Advocate for Respondent No.2 : Mr. N. I. Desmukh i/by Mr. Harshal Prakash  
Randhir

...

**CORAM : KISHORE C. SANT, J.**

**DATE : 19<sup>th</sup> APRIL 2023.**

**Per Court :**

Heard.

1. A challenge is to the order dated 07.10.2016 passed by the learned Joint Judicial Magistrate, First Class, Bhadgaon, directing to issue process against the accused/present petitioners for the offences punishable under Sections 420, 466, 467 read with Section 34 of the Indian Penal Code. The petitioners got the knowledge of this order on 17.05.2022 as is clear from the Roznama that on 04.04.2022, the summons were issued. A request was made by the complainant to issue

summons by registered post. It is only thereafter the accused came to know about that on receiving the summons and therefore thereafter they approached this Court.

. By going through the complaint, it is seen that a complaint was filed stating that the amount of commission of Rs.80,000/- is not paid to the complainant. It is alleged that the petitioners/accused persons, are Managing Director and Chairman of Rameshwar Sahakari Sakhar Karkhana Limited. It is submitted that though the complainant was entitled to receive this amount towards commission, the same is not paid to him.

2. The learned Advocate for the petitioners submits that reading the complaint as it is, no criminal offence is made out under Section 420, 466, 467 read with Section 34 of IPC. The complaint is only about non-receipt of alleged amount of commission from the Kharkhana towards supply of vehicle for transporting sugarcane. At the most it can be said to be dispute of a civil nature. The learned Court below has not considered this aspect and has issued the summons. The respondent is only a labour contractor and sugarcane transporter. Certainly non-

payment by itself cannot amount to be a criminal offence under Section 420, 466, 467 of IPC. No allegation is found to make out offence under Sections 420, 466, 467 read with Section 34 of IPC. The further allegation in the complaint that there is violation of the resolution of the Karkhana itself by which, it was resolved to give the contractors 18% commission.

3. The learned APP and also learned Advocate for respondent no.2 opposes the petition stating that the question requires trial. The order passed by the trial Court shows that he has applied the mind and procedure under Section 202 was followed. Looking to the order, it appears that the Court has considered that for the year 2012-2013, the labour contractors and transporter completing 25% trips in a day, were entitled to get 15.5% commission for the work they have done. Taking the reasoning as it is, it is seen that there is nothing to indicate in the order that any offence was made out as alleged.

4. This Court finds that continuation of the proceeding only clearly an abuse of process of law. Therefore the petition deserves to be allowed. The petition is allowed in terms of prayer clause 'B'.

5. With this, the Criminal Writ Petition is disposed off.

[ KISHORE C. SANT, J.]

*Najeeb.*