IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

42 CRIMINAL APPLICATION NO.381 OF 2021

JALINDAR NARAYAN UBHEDAL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER
...
Advocate for Applicant : Mr. Bora Satyajit S.
APP for Respondent State: Mr. V. N.Patil-Jadhav
Advocate for Respondent No.2 : Mr. S. A. Gaikwad

CORAM : SMT. ANUJA PRABHUDESSAI &
R. M. JOSHI, JJ.
DATE : 9th January, 2023

ORDER:

1. Heard finally with consent of learned counsel for the respective parties.

2. This is an application under 482 of the Criminal Procedure Code for quashing the First Information Report No.793/2020 registered with Newasa Police Station District Ahmednagar and consequent Charge sheet and Regular Criminal Case No. 418 of 2022 pending on the file of Judicial Magistrate First Class, Newasa for the offences punishable under section 420 of the Indian Penal code.

3. Heard learned counsel for the applicant learned APP for the State and learned counsel for respondent No.2.

4. Learned counsel for the applicant submits that the FIR does not constitute offence under section 420 IPC. He submits that the

dispute is basically of civil nature. He has relied upon the decisions of the the Supreme Court in **Thermax Ltd and others Vs. K. M. Johny and others (MANU/SC/1129/2011)** and **Dalip Kaur and others Vs. Jagnar Singh and others (MANU/SC/1139/2009)**. He submits that apart from the statement made in the first information report as well as statements of some of the witnesses, there is absolutely no material on record to prove that respondent no.2 had paid any money to the applicant. He submits that remedy lies not in filing criminal prosecution but in filing civil proceedings.

5. Per contra, learned counsel for respondent No.2 as well as learned APP submit that the contents of the first information report as well as the statements of the witnesses prima facie reveal that the applicant who was short of money for purchase of the property, had borrowed money from respondent No.2 and he refused to repay the same. It is stated that the applicant had obtained money from respondent No.2 by dishonest inducement.

6. We have perused the record and considered the submissions advanced by the learned counsel for the respective parties. The core question for consideration is whether the uncontroverted allegations made in the FIR and the other materiel collected in the course of investigation discloses commission of cognizable offence. Before adverting to the facts, it would be necessary to consider the definition

of 'cheating' as defined in section 415 of the Indian Penal code, which reads thus:

> "415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

7. In **Vijay Kumar Ghai & ors. Vs. The State of West Bengal & Ors, 2022 LiveLaw (SC) 305**, the Apex Court has observed that:-

> *"28. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.*
> *x x x x x*
> *30. Section 420 IPC is a serious form of cheating that includes inducement (to leador move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.*
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> *31. To establish the offence of Cheating in inducing the delivery of property, the following ingredients need to be proved:-*

1. The representation made by the person was false .

2.The accused had prior knowledge that the representation he made was false.

3.The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

4.The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

32. As observed and held by this Court in the case of Prof. R.K. Vijayasarathy & Anr. Vs. Sudha Seetharam & Anr., (2019) 16 SCC 739 the ingredients to constitute an offence under Section 420 are as follows:-

i) a person must commit the offence of cheating under Section 415; and

ii) the person cheated must be dishonestly induced to;

a) deliver property to any person; or

b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.
x x x x
34. There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this court in Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr.(2000) 4 SCC 168, the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to

> *criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating.*
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> *35. In Vesa Holdings Pvt. Ltd. & Anr. Vs. State of Kerala & Ors., (2015) 8 SCC 293 this Court made the following observation:-*
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> *"13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case, there is nothing to show that at the very inception there was any inception on behalf of an accused person to cheat which is a condition precedent for an offence u/s 420 IPC. In our view, the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the courts. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 Cr.P.C to quash the proceedings."*

8. In the instant case, the FIR lodged by respondent No.2 records that on 25.01.2019, the applicant came to her house along-with one Kadubai Nana Padale and informed her that he was in need of cash of Rs. One lakh for executing a sale deed. It is stated that respondent No.2 paid the said amount to the applicant on assurance that he will return the same within one month. It is stated that the applicant did not repay the money within one month. Hence she visited his house at

Paithan. The FIR records that the applicant refused to repay the amount and she realized that the applicant has deceived her by inducing her to pay the money with a false assurance to repay the amount within one month. The statement of the other witnesses also prima facie reveals that the respondent no.2 had parted with cash of Rs. One lakh in view of the assurance given by the applicant that he would repay the same within one month and that thereafter he refused to repay the same.

9. The assertions in the FIR are that the applicant had no intention to pay the amount. The question whether the accused had such intention to deceive the complainant since inception is to be gathered form the facts and circumstances of the case. This is not a case of business or commercial transaction. Considering the statement made in the first information report as well as statement of witnesses, at this stage, it cannot be said with certainty that the applicant did not have such intention. It is a matter which needs to be decided at the stage of trial.

10. In case of **Thermax Ltd. (Supra)** the Hon'ble Supreme Court has referred to the previous decisions wherein the question was whether a criminal prosecution could be permitted when the dispute between the parties is of predominantly civil nature and the

appropriate remedy would be a civil suit. Reference was made to the decisions in **Nagawwa Vs. Veeranna Shivalingappa (MANU/SC/0173/ 1976) AND Madhavrao Jiiwajirao Scindia Vs. Shambhajirao Chandrojirao Angre (1988) 1 SCC 692.** It was held that case of breach of trust may be both a civil wrong and a criminal offence, but there would be certain situations where it would be predominantly be a civil wrong and may or may not amount to a criminal offence. The said case was one of the type where, facts constituted civil wrong and ingredients of criminal offences were wanting. Similarly, in the case of **Anil Mahajan Vs. Bhor Industries Ltd. and anotehr, (2005) 10 SCC 228**, it was observed that the appellant in the said case had alleged that respondents had obtained the article by misrepresentation and in fact it was only the case of default in payment of some installments and substantial amount towards consideration was paid. Under the circumstance it was held that the dispute was of predominantly civil nature.

11. In **Alpic Finance Ltd. Vs. P. S. Sadashivan and another , MANU/SC/0106/2011,** it was observed that power could be exercised where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. It was held that at the stage of quashing FIR or

complaint, the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein.

12. In **Binod Kumar V. State of Bihar MANU /SC/0978/2014,** reference was made to **Indian Oil Corporation Vs. NEPC India Ltd. (2006) 6 SCC 736.** In paragraph No.10 it is specifically held that a given set of facts make out: purely a civil wrong; or purely a criminal criminal offence; or civil wrong as also a criminal offence. A commercial transaction or a contractual dispute , apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and the scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceeding. The test is whether the allegations in the compliant disclose a criminal offence or not.

13. In the instant case, as noted above the parties are not involved in business transaction. The FIR and other material on record prima facie indicate that the applicant has deceived the respondent No.2 in parting with money. This is not the stage where this Court can embark upon an enquiry, evaluate and assess the material on record to conclude that the applicant had no intention to deceive respondent

No.2. Hence, in our view, this is not a fit case to invoke jurisdiction under Section 482 of the Criminal Procedure Code. Hence, the application stands rejected.

(R. M. JOSHI, J) **(SMT. ANUJA PRABHUDESSAI J.)**

JPChavan