

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

CRIMINAL APPLICATION NO. 816 OF 2009

Balvirsingh Shrilal Dandotiya .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr. B. R. Waramaa, Advocate for the Applicant.

Mr. Y. G. Gujarathi, APP for the Respondent.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 16th February, 2023.

Date on which order pronounced : 30th March, 2023.

ORDER :-

. This application is filed by the original accused challenging an order passed by the learned 3rd Additional Sessions Judge, Dhule dated 18.02.2009 in Criminal Revision Application No. 109/2006 thereby dismissing his revision application. The applicant had challenged the order passed by the learned J.M.F.C., Shindkheda dated 28.07.2006 rejecting his application for discharge.

2. The facts giving rise to this application, in short are as under :

3. The Government had floated a tender on national level for

collection of toll tax on National Highway No. 3 at a spot between villages Dahasi and Savalade. The toll was to be collected for construction of a bridge on Tapi river. The said work was to be given for a period from 22.10.1998 till 26.04.1999 for 187 days. The applicant filled in tender. His bid was accepted by entering into necessary contract. As per the contract, the applicant was to deposit Rs. 9,45,551/- towards first installment in the account of Executive Engineer, National Highway, Zone 11. Thereafter he was to deposit Rs. 8,40,000/- per week. He was allotted the work of collection of toll from midnight of 22.10.1998. After starting the work the applicant deposited the installments for a period from 22.10.1998 till 10.12.1998. However, thereafter for two weeks he did not deposit the amount and therefore, notice was issued to him on 26.12.1998. Though from time to time orders were given directing him to pay the installments, he did not pay the said amount.

4. Thereafter, suddenly without any notice the applicant stopped the work and left the work without giving any information from midnight of 31.12.1998. Thus, for three weeks he did not deposit the amount as per the contract and kept the amount of Rs. 25,20,000/- for his own purpose. Thus, a complaint was lodged with Nardana Police Station, District Dhule bearing FIR No. 13/1999 on 06.03.1999 for the

offences punishable under Sections 406 and 420 of the Indian Penal Code (for short "I.P.C.").

5. On the basis of information investigation started and charge-sheet came to be filed. On the basis of complaint and charge-sheet, a complaint came to be filed in the Court of learned J.M.F.C., Shindkheda bearing R.C.C. No. 184/1999. The applicant appeared in the case. He filed an application under Section 239 of the Code of Criminal Procedure (for short "Cr.P.C.") for discharge. The said application came to be rejected by the learned J.M.F.C., Shindkheda and directed to frame charge for an offence punishable under Section 406 of the I.P.C.

6. The applicant filed revision application in the learned Sessions Court at Dhule bearing Criminal Revision Application No. 109/2006. The learned 3rd Additional Sessions Judge, Dhule by judgment and order dated 18.02.2009 rejected the revision application mainly observing that clearly a case is made out to frame charge under Section 406 of the I.P.C.

7. The main submission of the applicant is that this dispute at the most can be said to be a dispute of civil nature as the allegation is only in respect of breach of terms of contract. The State has also filed a civil suit against the applicant and the same is decreed. While entering into

contract a bond of guarantee was executed by the applicant towards security. The said bond is also executed.

8. Learned A.P.P for respondent submits that, a clear case is made out of criminal breach of trust as the applicant collected the amount of toll tax, however, has not deposited the same in the account of the Government. Thus, he has utilized the amount of Rs. 25,20,000/- for his own purpose.

9. Having considered these submissions and record, it is seen that the facts are not disputed. The only contention is that, it was a civil dispute and even a civil suit was filed. It is well settled that, merely filing of a civil suit does not absolve the accused of the criminal liability. For that, it is to be considered as to whether the act of the applicant falls within Section 406 of the I.P.C. Section 405 of the I.P.C. which reads as below :

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

10. In this case, it is clear that, a trust was created by way of contract wherein the applicant was only to collect amount of toll tax and deposit it in the account of Government. This applicant, however, did not deposit the amount though collected it towards toll tax. This non depositing of amount clearly amounts to criminal breach of trust.

11. So far as the submission in respect of guarantee bond is concerned, it is seen from the wording of the guarantee bond that the said guarantee was not to exceed to Rs. 7,32,800/- whereas, the amount of misappropriation is Rs. 25,20,000/-. It is thus clear that, the said guarantee bond was not sufficient to cover the losses. Secondly, the bond was only towards guarantee and was not to authorize the applicant to retain amount with him. Further conduct needs to be seen of the applicant that, he left the work without any notice by 31.12.1998. It is thus clear that, he had ran away with the amount. Intention of the applicant is clear from the fact that, he stopped depositing amount just within 3-4 weeks.

12. Learned A.P.P. has rightly pointed out the averment from the affidavit in reply from paragraph Nos. 7 and 9 wherein again the details are given to submit that, clearly a case under Section 406 is made out.

13. Learned advocate for the applicant relied upon the judgment of the Hon'ble Apex Court in a case of **R. Nagender Yadav Vs. The State of Telangana and anr.** reported in **2022 Live Law (SC) 1030** on the point of exercise of power by the High Court under 482 of the Cr.P.C. where the allegation was that the signature on the sale deed was forged and later a civil suit was filed for cancellation of sale deed. In the said case, the High Court had refused to quash the complaint wherein, the Hon'ble Apex Court has held that the transaction was clearly of civil nature and in that view, the complaint was quashed. With respect this judgment is not applicable to the case in hand.

14. Learned advocate for the applicant further relied upon the judgment of the Hon'ble Apex Court in a case of **Medmeme, LLC and others Vs. Ihorse BPO Solutions Private Limited** reported in **2017 AIR (SC) 3656** wherein, the Hon'ble Apex Court observed that, in the facts of the case no prima facie case was made out for offences under Sections 420, 406, 409 r/w Section 120B of the I.P.C. and it was a purely question of breach of contract in not making entire payments for services rendered to the applicant in that case. There was also a dispute about the services rendered by the applicant which was alleged to be not in conformity with the terms of contracts. Certainly, that was a dispute of civil nature and therefore, the said judgment cannot be

applied in the fact of the present case.

15. Further, learned advocate for the applicant relied upon the judgment of the Hon'ble Apex Court in a case of **Manharibhai Muljibhai Kakadia & Anr. Vs. Shaileshbhai Mohanbhai Patel & Ors.** reported in **2012 All MR (Cri.) 4105**. In that case, the learned C.J.M. had directed an enquiry under Section 202 of the Code. Pursuant to an enquiry, the investigating officer submitted "C"- summary report giving opinion that the dispute between the parties was of civil nature. The said summary report was accepted against which the parties had gone to the High Court and from there the original complainant had approached the Hon'ble Apex Court. The judgment is mainly with respect to the provisions of Sections 200 and 202 of the Code. This case is of no use to the applicant.

16. Learned advocate for the applicant further relied upon the judgment of the Hon'ble Apex Court in a case of **Satishchandra Ratanlal Shah Vs. State of Gujarat and another** reported in **2019 AIR (SC) 1538**. The Hon'ble Apex Court in the said judgment had discussed the provisions of Section 239 of the Cr.P.C. and the duty cast upon the Court while framing the charges. In the said judgment, it is held that, an order of framing of charges is of serious concern to the accused as it

affects his liberty substantially. It is held that, the Courts must be cautious that their decision at that stage causes no irreparable harm to the accused. It is also further held that the exercise of quashing of the case needs to be undertaken by the High Court in exceptional cases. The Court has to see that there is some evidence. This judgment is not of any help to the applicant. He further relied upon the following judgments.

- (i) Binod Kumar and others Vs. State of Bihar and another reported in 2014 AIR (SCW) 6310.
- (ii) Hridaya Ranjan Pd. Verma Vs. State of Bihar reported in 2000 AIR (SCW) 2077.
- (iii) All Cargo Movers (I) Pvt. Ltd. & Ors. Vs. Dhanesh Badarmal Jain & Anr. reported in 2007 AIR (SCW) 6667.
- (iv) Joseph Salvaraj A. Vs. State of Gujarat & Ors. reported in 2011 AIR (SC) 2258.
- (v) V. P. Shrivastava Vs. Indian Explosives Ltd. & Ors. reported in 2010 (10) SCC 361.

17. This Court on going through the order passed by the learned Additional Sessions Judge, Dhule finds that, the learned Additional Sessions Judge has rightly appreciated the facts and material on record and has clearly recorded that a case of criminal breach of trust is clearly made out.

18. Considering the citations in the facts of this case, this Court finds that, clearly a case is made out to frame the charges. No perversity or illegality is found in the order passed by the learned Additions Sessions Judge. This Court finds that, there is no merit in the application and the same deserves to be dismissed.

19. The criminal application is hereby stands dismissed.

(KISHORE C. SANT, J.)

P.S.B.