IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 1127 of 2021

1. Nandkishor Shamkant Sonar,
   Age : 49 years, Occu. : Business,

2. Sau. Megha W/o. Nandkishor Sonar,
   Age : 42 years, Occu.: Business

Both are resident of
Ekvira Jewellers, At & Po. Anturli,
Tal. Muktainagar, Dist. Jalgaon. **...Petitioners**

Versus

State of Maharashtra **...Respondent**

Alongwith

Criminal Writ Petition No. 1214 of 2018

1. Arun Raman More,
   Age : 35 years, Occu. : Labour,

2. Ghanshyam Raman More,
   Age : 39 years, Occu.: Labour,

Both are resident of
Anturli, Tal. Muktainagar, Dist. Jalgaon. **...Petitioners**

Versus

1. State of Maharashtra
   Through its Muktainagar Police Station,
   Jalgaon.

2. Deepak Diwakar Kulkarni,
Age : 56 years, Occ.: Agri,
R/o Anturli, Tal. Muktainagar, Dist. Jalgaon. **...Respondents**

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Advocate for Petitioner : Smt. Rashmi S. Kulkarni

Advocate for Respondent No.2 in WP1214/2018 : Mr. S.S. Manale with Mr. S. D. Kaldate, Advocate for Assist to AP.P.

APP for Respondent/State : Smt. D. S. Jape

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CORAM : KISHORE C. SANT, J.
RESERVED ON : 18th APRIL, 2023.
PRONOUNCED ON : 6th JUNE, 2023.

JUDGMENT :

Heard.

1. Rule.

2. Rule made returnable forthwith by consent of the parties.

3. The petitioners in Writ Petition No.1127/2021 are accused no.1 and 2 in a complaint i.e. R.C.C. No.28/2017 pending in the Court of learned Judicial Magistrate First Class, Muktainagar. Their application for discharge at Exhibit-100 came to be rejected by the learned J.M.F.C. by order dated 31.01.2019. The Revision Application filed bearing

No.15/2019 also came to be rejected by the learned Sessions Court, Bhusawal by judgment and order dated 18.02.2021.

. The petitioners in Writ Petition No.1214/2018 are accused no.3 and 4 in a complaint i.e. R.C.C. No.28/2017 pending in the Court of learned Judicial Magistrate First Class, Muktainagar. Their application for discharge at Exhibit-64 came to be rejected by the learned J.M.F.C. The Revision Application filed bearing No.13/2018 also came to be rejected by the learned Sessions Court, Bhusawal by judgment and order dated 23.10.2018. All the petitioners are thus before this Court. Since both the matters are arising out of the same trial, both are taken together. Criminal Writ Petition No.1214/2018 was admitted by order dated 23.10.2018. By consent of the parties, the same is taken for final disposal.

4. The facts in short are that one Kamlabai lodged the report on 25.08.2016 against the petitioners and some others for the offences punishable under Sections 406, 468, 420, 506, 120-B of the Indian Penal Code. The police in view of subsequent of Section of the informant herself filed 'C' Summary Report on 23.11.2017. In fact the FIR was lodged by said Kamlabai stating that she was cheated by the accused persons. It is the allegation that the petitioners no.1 and 2 run a business of jewelry shop. They raised the funds by accepting the deposits from the various persons. The accused also issued receipts towards the amount taken as deposit. However the said amount was not repaid thereafter. After some days, the petitioners started avoiding to see persons and did not pay the amount of deposits. In her complaint itself she had stated the names of present informants. However thereafter she gave a statement to the police that she had filed the complaint out of misunderstanding and she does not want to prosecute the petitioners and other accused persons. Police therefore filed a report and prayed for closing of case.

5. Since police filed closure report in the case of Kamlabai, the other persons from whom deposits were accepted, filed another complaint with the police. On the basis of that information, the police registered an offence i.e. FIR bearing Crime No.5/2017 on 07.01.2017 against the same persons. This FIR was registered by eighteen persons. The police pursuant to the FIR filed charge-sheet. The trial is thus now pending as RCC No.28/2017. It is the common story that informants were lured by the petitioners to deposit the amount by assuring handsome returns. No such amount was paid, cheques given, however were dishonored and therefore all the persons filed complaint.

6. After filing of the charge-sheet, the petitioners in petition no.1127/2021 filed application below Exhibit-100, seeking discharge mainly on the ground that there cannot be second FIR on the basis for the same offence. It is stated that Kamlabai had lodged report, wherein one Deepak Kulkarni was also shown as accused. However now in the subsequent FIR even Deepak Kulkarnni is shown as Informant. Petitioners' application in petition no.1214/2018 below Exhibit-64 also came to be rejected.

7. It is the case of the accused no.1 that because of some ailments, he was taking treatment at Aurangabad and at that time he had kept 117 blank signed cheques in the shop, are forged. The learned trial Court on going through the material, found that there is sufficient material on record to proceed with the trial. Amount was taken under the guise of developing a jewelry shop. However when the repayment was due, the same was not paid. Thus it is observed that clearly an offence is made out. The petitioners therefore filed a Criminal Revision Application in the Sessions Court. The learned Sessions Court by way of impugned judgments and orders dismissed the said Revisions. The petitioners therefore have approached this Court.

8. It is the submission of the learned Advocate for the petitioners that in fact it is clearly a transaction that had taken place between the accused and the said persons. All these persons have filed cases under Section 138 of the Negotiable Instruments Act. It is tried to be canvassed that the persons, who have filed complaint are not financially sound. They do not have the capacity to advance the loan like Rs.3 Lakh and Rs.5 Lakh etc. The borrowers are not genuine. The petitioners have not done anything illegal as accused no.1 is holding a license of money lending. They run the business since 1998. All the informants know the petitioners since last 14-15 years. When Summary Report was filed in respect of crime registered on the basis of information by Kamlabai, no one has raised any objection to the said. On the basis of subsequent FIR, the discharge application ought to have been allowed. This is not a case of inducement attracting Section 420 of IPC, but as the same persons were knowing the petitioners, there is no question of inducement. From the story itself, it is seen that the petitioners had raised a loan to grow the business. No intention to defraud can be gathered.

9. So far as accused no.3 and 4 that is petitioners in Writ Petition

No.1214/2018 are concerned, the main submission is that the no offence is made out against these petitioners. When no case is made out against the petitioners/original accused no.1 and 2, there was no offence made out against the petitioners/original accused no.3 and 4. There was no recovery from these petitioners to show their involvement in the crime. There is no material to show that these petitioners were entrusted with the amount to frame charges against them for the offence punishable under Sections 406, 468, 420, 506, 120-B of IPC. These petitioners were not present when the complainant deposited their amount with accused no.1. No role is attributed to them. It is submitted that against these petitioners, no case is made out for framing of the charges.

10. So far as the respondent is concerned, Mr. Manale learned Advocate has filed application for assisting PP. Learned APP vehemently opposed the petition. He submits that the earlier complaint by Kamlabai, was filed on her behalf. Each transaction with each of the depositors is independent transaction and gives independent cause of action to file complaint. The 'C' Summary Report that was filed in the case of Kamlabai, was in view of the compromise between the parties and therefore the subsequent FIR cannot be said to be in respect of the same transaction. About the capacity to pay the amount, he submits that it is not a consideration at this stage. As it is about the deposits, there are receipts issued by the petitioners. Even the cheque books are mentioned in the receipts and therefore it cannot be said that the cheques were stolen. The signature on the disputed cheques are not disputed. He submits that story that the petitioners had signed 117 blank cheques, cannot be believed. The cheques are issued for a period from 2010 to 2016 and therefore it cannot be accepted that those were stolen on the single day. He submits that from supplementary statement recorded by the Investigating Officer, it is clear that there is material to proceed against the accused persons. In the FIR clearly ingredients of Section 420 and 450 are made out and showing that the petitioners had taken amount by inducing the persons. The amount taken for the development of the shop is not returned which clearly shows that there is breach of trust. Role of all the accused is clearly seen in the FIR. Though the ground is taken that the cheques were lost, there is no complaint filed by the petitioners. He submits that at this stage, the Court is not supposed to conduct mini trial, but Court has to see prima facie case.

11. The learned APP further submits that earlier complaint was filed on 25.08.2016 by Kamlabai. Subsequently she clearly stated in her statement before the police that she received her amount and therefore she does not want to prosecute further. It is on that basis 'C' Summary Report was filed and was granted. The repayment to Kamlabai was in respect of the case under Section 138. He supports the contention of Mr. Manale that each transaction is a distinct transaction giving separate cause of action. Capacity to pay the amount etc. need not be gone into at this stage.

12. The learned Advocate for the petitioners in rebuttal submits that the statement of Rajendra and his mother are silent about the incident of hunger strike when they had gone on the hunger strike. The statement of Kamlabai that she had received amount is not only about herself, but for others as well. She invites attention to the statement in the subsequent FIR. She again reiterated that there is no inducement. The transactions are simply loan transactions.

13. Considering these submissions, this Court finds that there are various statements of the persons, who are cheated. The common story is that amount was taken from the depositors. The receipts were issued on the revenue stamp along with cheque. The statements show that even the cheques numbers are also mentioned in the statements and under such circumstances, this Court finds that there is some material. Police have recorded statements and have also collected the information from the bank. The details of the amount deposited with the petitioners as well as the receipts with charge-sheet. The bank had given letter to the Investigating Officer in respect of the cheques, showing that the cheques were given from 2010 till 2016. The case of the petitioners that he had kept blank signed cheques cannot be accepted at this stage. At this stage, material collected and the statement recorded clearly make out a case to proceed with the trial.

14. The learned Advocate for the petitioners relied upon the judgment in the case of **T. T. Antony Vs. State of Kerala and Others**, reported in (2001) 6 SCC 181. Wherein the Hon'ble Apex Court has held that there cannot be two FIRs in respect of the same incident. There is no dispute about the said preposition. In this case, however it is seen that each person has entered into individual transaction. All the transactions can give independent cause of action and therefore the said judgment is not applicable to the facts of the case.

. The next judgment is in the case of **Arnab Ranjan Goswami Vs. Union of India and Ors.**, reported in AIR 2020 SC 2386. Wherein the Hon'ble Apex Court has laid down that the High Court has power to quash the proceedings. It was held that the successive application at different places will destroy freedom of citizen and in that view, FIR was quashed. On that the Hon'ble Court had already considered the ingredients of inducement. So far as the said case is concerned, the various FIR are lodged in respect of the same incident.

15. The third judgment is in the case of **Anand Kumar Mohatta and Ors. Vs. State (Govt. of NCT of Delhi) Department of Home and Ors.**, reported in AIR 2019 SC 210. The Hon'ble Apex Court has considered the essence of offence under Sections 405 and 406 of IPC. This Court finds that in the present case, the amount was taken from the various persons, however the same is utilized for the own purpose of the petitioners. At this stage, it cannot be clearly gathered that there is no misappropriation.

. The next judgment relied upon is in the case of **Dalip Kaur & Ors. Vs. Jagnar Singh & Anr.**, reported in 2009 AIR (SC) 3191.

Wherein the Hon'ble Court has considered the ingredients of Section 420 of IPC. From FIR in this case, this Court finds that certainly offence under Section 420 is made out. In the case of Ashok Basak Vs. State of Maharashtra & Ors., the Hon'ble Apex Court considered the various judgments. In our case, it is seen that the informants had entrusted the amount with the petitioners and there is no doubt at least at this stage, no case is mount to come to conclusion that there was no entrustment.

16. The last judgment he relied upon is in the case of **Satishchandra Ratanlal Shah Vs. State of Gujarat and Ors.**, reported in AIR 2019 (SC 1538. Wherein it is held that the mere inability to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this *mens rea* which is the crux of the offence. In our case, this Court finds that not only that the amount is not repaid, but there are allegations that when the informants went to ask for return of the amount, they were threatened. At the time of taking amount itself certainly show that it was done only to make the people to believe in the word of the petitioners.

17. Learned APP in support of his submission, relied upon the judgments in the case of **Hardeo Singh Vs. State of Bihar and Others**, reported in AIR 2000 SC 2245; in the case of State of **H.P. Vs. Krishan Lal Pradhan and Others**, reported in AIR 1987 SC 773. He further relied upon the judgment in the case of **Vijayander Kumar and Others Vs. State of Rajasthan and Another**, reported in (2014) 3 SCC 389. He submits that the same set of facts may give cause of action to the civil case as well as criminal case and on the same cause of action, civil suit can be filed, is not a ground to quash the criminal case.

. He further relied upon the judgment in the case of **Kamal Shivaji Pokarnekar Vs. State of Maharashtra and Others**, reported in (2019) 14 SCC 350. Wherein the Hon'ble Apex Court has held that the complaint cannot be quashed only on the ground that allegation made therein appeared to be of civil nature, if ingredients of offence are made out in the complaint against the accused.

18. Considering the above submissions, this Court finds that both the Courts have rightly considered the case. No illegality is found in the order passed by the learned Sessions Judge, Bhusawal in both petitions. For this reason, this Court finds that no case is made out to call for interference and there is no merit in Writ Petition No.1127/2021 and in

Writ Petition No.1214/2018, therefore the same deserves to be dismissed. Hence the following order.

O R D E R

i. Writ Petition No.1127/2021 and Writ Petition No.1214/2018 are dismissed.

ii. Rule stands discharged in both the petitions.

[KISHORE C. SANT, J.]

19. The learned Advocate for the petitioners submits that in this petition, interim relief was granted by this Court and it is running till now. She prays for continuation of the same for a period of four weeks.

. The learned Advocate for the respondent opposes the prayer.

20. Considering that the interim relief is running since long, same is continued for four weeks from today.

[KISHORE C. SANT, J.]

Najeeb..