

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

CRIMINAL APPLICATION NO.3285 OF 2021

**RAJEEV @ RAJU PRAKASHCHAND JAIN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. P. F. Patni, Advocate for the applicant
Mr. A. R. Kale, APP for the respondent/State
Mr. S. S. Bhagure, Advocate for respondent No. 2.

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R. M. JOSHI, JJ.**

DATE : 20th JANUARY, 2023

PER COURT :-

1. With consent, heard finally at the stage of admission.
2. This is an application under Section 482 of the Code of Criminal Procedure for quashing first information report No. 326 of 2021 registered with Police Station Chandanzeera, Jalna and R.C.C. No. 254 of 2022 pending before the JMFC No.3, Jalna for the offences punishable under Sections 406, 420, 506, 504 of the Indian Penal Code.
3. Learned counsel for the applicant states that the FIR does not disclose any commission of cognizable offence as against the applicant. He submits that there was business relationship between the applicant and the complainant since last 7 years. He states that the applicant did

not have any intention to cheat or deceive since inception. He further submits that the dispute if any is of civil nature. He, therefore, submits that continuation of this criminal proceedings as against the applicant will be sheer abuse of the process of Court.

4. Per contra the learned APP as well as learned counsel for the respondent No.2 submit that the first information report as well as the statement of the father of the complainant *prima facie* reveals that they had supplied the goods to the applicant herein. The applicant has not only failed to make the payment but he has avoided making the payment. It is stated that the allegations in the first information report *prima facie* prove that the applicant had an intention to deceive since the inception. It is further stated that there is nothing on record to indicate that the dispute between the applicant and the respondent No. 2 was of civil nature. It is, therefore, submitted that this is not a fit case to exercise jurisdiction under Section 482 of the Cr.P.C.

5. We have perused the records and considered the submissions advanced by learned counsel for the respective parties.

6. Section 482 of the Cr.P.C. confers powers on the High Court to make such orders as may be necessary to give effect to any order

under the Code to prevent abuse of the process of any Court or to secure the ends of justice. It is well settled that, in exercise of inherent powers under Section 482 of Cr.P.C. the FIR or the criminal proceeding can be quashed *inter alia* on the ground that the FIR and the other material do not disclose commission of cognizable offence and allowing the proceeding would be an abuse of the process of the Court. It would be relevant refer to the decision of the Hon'ble Supreme Court in the case of ***Indian Oil Corpn. Versus Npec India Ltd., and others*** reported in ***(2006) 6 Supreme Court Cases 736*** wherein it has been held that as under:-

"The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings which are relevant for the present purpose are :

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently

improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a 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 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 of, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

7. In the instant case the first information report reveals that the applicant and the respondent No.2 have business dealings in supply/ purchase of steel rods since last 10 years. In the usual course of business, on 12th March, 2021 the applicant sent a text message to the respondent No.2 to supply steel rods, as per the specifications mentioned, total value of which was Rs.17,04,810/-. The respondent

No.2 had agreed to deliver the goods and instructed the applicant to transfer the amount by RTGS. Since the applicant had agreed to transfer the money by RTGS, respondent No.2 loaded the steel rods in truck No. MH-18-BG-2633. The applicant thereafter expressed his inability to transfer the money due to the sickness and hospitalization of his parents. The complainant informed the applicant that he would not deliver goods till the payment was made. Hence the goods were not dispatched and the vehicle loaded with steel rods was parked in the compound of Gajkeshari Rolling Mill. The respondent No.2 thereafter received a text message from the applicant with a request to deliver the goods and to trust him in view of their long standing business relationship with further assurance to make the payment immediately. The respondent No.2 dispatched the goods with a belief that the applicant would honour the assurance and make the payment.

8. The respondent No.2 has stated that the applicant confirmed having received the goods i.e. steel rods and assured to make the payment immediately. Since the respondent No.2 did not receive any payment for about 3 days, he tried to contact the applicant on mobile phone. Respondent No.2 claims that the applicant had blocked his number and hence he along with his father and Ashok Rathi went to Nisarpur at Madhya Pradesh and questioned him about the payment. The

applicant told him that his mother was sick and he was unable to make the payment. He told them that he would transfer the money by RTGS. It is stated that the applicant did not pay the money despite receipt of the goods. Hence the respondent No.2 lodged the first information report on 14th October, 2021 alleging that the applicant had committed an offence of cheating.

9. The said crime was investigated. In the course of the investigation the statement of the father of the complainant and Ashok Rathi have been recorded. These witnesses have *prima facie* supported the statement of the respondent No.2.

10. The first information report and the other material on record *prima facie* reveals that the applicant herein had induced the respondent No.2 to deliver steel rods with an assurance of making the payment but failed to make the payment. We are cognizant of the fact that mere non-payment of money or breach of contract cannot give rise to criminal prosecution. To hold a person guilty of offence of cheating it is necessary to show that he had fraudulent or dishonest intention. In the instant case the material on record *prima facie* indicates that the applicant had induced the respondent No.2 in dispatching the goods. He not only failed to pay the money but blocked the phone of respondent No.2. The

conduct *prima facie* discloses dishonest intention to cheat. The applicant does not claim that the goods delivered were not as per the specification or that there was any dispute over the quantity, quality and the price of the goods delivered. The contention of the applicant is that he had not received the goods. Suffice it to say, the defence raised by the applicant cannot be considered at this stage. In our considered view this is not a case where the applicant has alleged breach of contract. Hence the power of under Section 482 of Cr.P.C. cannot be exercised to scuttle a legitimate prosecution.

11. In the circumstances the case is not covered under any of the parameters laid down by the Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Ch. Bhajan Lal and others*** reported in ***(1992)3 SCR 735 (SC)***. In the result, the application is dismissed. The Trial Court shall decide case on its own merits without being influenced by any of the observations made hereinabove.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

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