IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.230 OF 2021

Shitalkumar Sudhakar Manere ..Applicant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Meghashyam Kocharekar i/by Omkar Nagwekar, for the Applicant.
Mr. J. P. Yagnik, APP for the Respondent/State.
Mr. Amogh Singh i/by Siddhant A. Singh, for the Respondent No.2.

CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.

DATE : 15th JUNE, 2023

P.C. (Per Nitin W. Sambre, J).

1. The applicant is seeking quashing of FIR being Crime No.37 of 2020 registered with Jaisingpur Police Station for the offence punishable under Sections 420, 406, 409, 467, 468, 471, 477(A) r/w 34 of the IPC in which he is already charge-sheeted.

2. The prosecution case against the applicant is, till 2017 the applicant has received a substantial amount of around Rs.9,50,00,000/- (Rs. Nine Crores Fifty Lakhs) in various bank accounts, out of which, an amount of Rs.3,00,00,000/- (Rs. Three Crores) was returned, however, the balance amount of Rs.6,50,00,000/- (Rs. Six Crores Fifty Lakhs) was not returned.

3. The aforesaid amount was received by the applicant in

the form of loan with an assurance to refund the same with accrued interest. As the applicant has failed to honour the aforesaid promise, the offence in question came to be registered.

4. Counsel for the applicant would urge that the offence registered against the applicant is liable to be quashed and set aside on the following grounds :-

(a) That for very cause viz. recovery of the amount which is due and shown to be payable by the applicant for which the civil case is pending before the competent civil Court, this itself speaks that there exists a civil dispute;

(b) The complaint came to be lodged at much belated stage without there being any explanation for such delay;

(c) Further contention of Mr. Meghashyam Kocharekar, counsel appearing for the applicant that necessary ingredients of Section 406 of the IPC cannot be inferred as there is no entrustment of the property. According to him, the inducement is alleged in the year 1992-93.

5. So as to substantiate the aforesaid contentions, counsel for the applicant would invite our attention to the complaint lodged by the respondent/complainant on 25th September, 2019 to the police authority wherein it is specifically referred that in 2014 the amount was taken by the applicant as hand loan which was to be refunded at the rate of 12% interest. According to him, in the complaint which has led to registration of aforesaid offence, a separate story is put forth and from the said story, it can be inferred

that the amount was received in 2013 and as such, time barred debt is sought to be relied on for the purpose of registration of offence.

6. While countering aforesaid submissions, Mr. Amogh Singh, learned counsel appearing for the respondent submits that pendency of civil suit is not in dispute. However, according to him, he has every right and remedy to invoke criminal jurisdiction of the Court, particularly, since he is able to demonstrate *prima-facie* commission of offence.

7. According to him, the claim is well within the limitation as last payment made in the FIR is of 2017. He would also like to rely on the contents of the FIR for the said purpose.

8. We have appreciated the aforesaid submissions.

9. From the FIR it can be inferred that the amount was paid by the respondent/complainant in the account of the applicant and specific reference to such transfers is noticed not only in the FIR but also from the supporting documents during the investigation.

10. It appears that the last amount refunded by the present applicant to the complainant was on 11th August, 2017. As such, it can be inferred that the limitation can be considered from the said date. The complaint in question is lodged in 2019, particularly, on 3rd February, 2020. The period of commission of offence is shown to be in between 1st January, 2012 to 25th September, 2019. The first

payment appears to be received by the applicant on 1st January, 2012 pursuant to demand made and the last payment was paid by the complainant on 25th September, 2019 after the amount of Rs.15,00,000/- was refunded on 11th August, 2017.

11. In the aforesaid background, it cannot be said that the complainant has approached before the Court below or the authorities at belated stage and time barred claim is sought to be relied on for the purpose of registration of offence so as to twist arm from the recovery of the amount. The complaint appears to be well within the limitation.

12. Apart from above, even if the respondent/complainant has proceeded for recovery of amount which is due and receivable from the applicant before the competent civil Court, such act on the part of the respondent/complainant is quite justified as the recourse to the filing of the suit for recovery is based on the statutory remedy available to the respondent/complainant. The respondent/ complainant cannot claim recovery of the amount in the present criminal proceedings and that being so, he was quite justified in taking out civil proceedings for the recovery of amount.

13. Apart from above, what can be noticed is, the amount is very much received by the applicant in his account. It is for the applicant to discharge the said burden. The very conduct of refund of the part amount by the applicant primarily suggests that he

accepted the very loan transaction *interse* between the complainant and the applicant.

14. In that eventuality, claim of the applicant that the criminal proceeding in view of pendency of the civil suit is liable to be rejected.

15. As regards offence of criminal breach of trust is concerned, what can be noticed from the record is the money was duly entrusted to the applicant as could be inferred from the account entries of the applicant. Such entries can be said to constitute ingredients of offence under Section 406 of the IPC and as such the entries rightly prompts the respondent/Investigating Agency to invoke provisions of Section 406 of the IPC against the applicant.

16. As regards inducement way back in the year 1992-93 is concerned, perusal of the FIR reflects that there was continuous transaction between the applicant and the complainant. It appears that the applicant gained the trust of the complainant by helping him in getting government subsidies and by depositing amount of subsidy received from the government in the account of the complainant. Such act has prompted the complainant to believe that the applicant is genuine person. Subsequent thereto, the applicant appears to have taken advantage of the aforesaid and has taken hand loan with an assurance of repayment. The aforesaid conduct cannot be said that the inducement is of the year 1992-93. From the

very conduct of the applicant, such inducement appears to be a continuing act and same can be inferred from his conduct of not only the receiving amount but also returning back of the amount.

17. As regards the conduct of the applicant *qua* the inducement and cheating is concerned, as observed herein-above the subsequent conduct viz. of accepting the amount can be taken into consideration. The conduct of the party, particularly, applicant cannot be termed as mere breach of contract but there is something more than breach of contract. The narrations of the event initially by gaining trust of the complainant and thereafter accepting the amount and failure speaks of the dishonest intention.

18. In support of the aforesaid, reliance can be placed on the Apex Court judgment in the matter ***Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr.*** reported in ***(2000) 4 SCC 168***. The deception of the complainant and dishonestly inducing the complainant to deliver the money sufficiently speaks of the intention of the applicant.

19. In this background, no case for showing indulgence in exercise of powers under Section 482 of the CrPC is made out.

20. The application as such stands dismissed.

[SHARMILA U. DESHMUKH, J.] **[NITIN W. SAMBRE, J.]**