

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Application No.7 of 2016

M/s Tarini Steel Co. Ltd.

A private Limited Company, incorporated
under the Indian Companies Act, 1956,
having its Registered and administrative
Office at 101, General Block, Opp. Power
House, Telco Road, MIDC, Bhosari, Pune-
411026 and other branches (through its
Director Shri. Sanjay Ramkaran Agarwal).

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... Applicant.

Vs.

1. M/s. Sandvik Asia Pvt. Ltd.

Through its authorized representative,
Ms. Tanuja Upadhay, having office
At Mumbai Pune Road, Dapodi,
Pune-411012

2. M/s. Sandvik Asia Heating System
Division

Plot No.49, 49B, Sipcot Industrial Complex,
Hosur-635126, State Tamilnadu.

3. Mr.Ajay Sambrani

CEO of M/s Sandvik Asia Pvt. Ltd.
Mumbai Pune Road, Dapodi,
Pune-411012

4. Mr. Satbir Singh

Divisional Gen.Manager (Heating System)
M/s. Sandvik Asia Heating System

Division, Plot No.49, 49B,
Sipcot Industrial Complex,
Hosur-635126, State Tamil Nadu.

5. Mr.Debabrata Roy
National Product Manager (Heating
System)
M/s. Sandvik Asia Heating System
Division, Plot No.49, 49B,
Sipcot Industrial Complex,
Hosur-635126, State Tamil Nadu.

6. Mr.Kanval Saigal
M.D.Heaing System Division,
M/s. Sandvik Asia Pvt. Ltd.
Mumbai Pune Road, Dapodi,
Pune-411012

7. Mr. Kiran Acharya
CFO, M/s. Sandvik Asia Pvt. Ltd.
Mumbai Pune Road, Dapodi,
Pune-411012

8. Mr.Nitin Chaudhary
CEO, M/s. Sandvik Asia Heating
System Division,
Plot No.49, 49B, Sipcot Industrial
Complex, Hosur-635126, State Tamilnadu.

9. The State of Maharashtra
(Through the Public Prosecutor,
High Court, Mumbai).

... Respondents.

Mr. Raghav Taneja, Advocate i/b Vidhi Partners for applicant.
Mr.Shrinivas Deshmukh, Advocate a/w Adv. Ramesh Rajput i/b

M/s Mulla and Mulla and Craigie Blunt and Caroe for respondents No.1 to 8.

Mr RM Pethe, APP for respondent No.9-State.

Coram: R.N.Laddha, J.

Date :18 December, 2023.

P.C.:

Heard learned Counsel for the parties.

2. The applicant filed a complaint against the respondents alleging the commission of offences punishable u/s 406, 420 r/w 34 of the Indian Penal Code. The Magistrate took cognizance and issued a process against the respondents. The respondents approached the Sessions Court by filing a criminal revision bearing No.146 of 2015 u/s 397 of the Code of Criminal Procedure (for short, 'CrPC'), praying for quashing and setting aside the order passed by the learned Magistrate against them. The Additional Sessions Judge accepted the prayer of the accused and quashed and set aside the order of the learned Magistrate of issuance of process, mainly on the grounds that the allegations in the complaint did not specifically disclose that the accused had the intention of cheating the complainant since the inception, and it was a case of mere breach of contract.

3. Feeling aggrieved by this judgment and order of the Additional Sessions Judge, Pune, the complainant has preferred the

present criminal application.

4. In the complaint, it is stated that in 2010, the complainant was required to install annealing facilities for Spherodise Annealing of wire rod coils with a capacity of 400 MT per month. The accused made various representations and recommended the complainant a user-friendly kind of furnace, which would give the complainant/company much better output as compared to the traditional furnace along with lower operational costs. Based on the accused's representation, the complainant purchased the furnace. It is alleged that the accused did not provide the furnace within the stipulated period, though they accepted the amount, nor responded to its communication. Further, the complainant alleged that the accused used sub-standard material for the furnace, which resulted in it not functioning properly to their satisfaction and, as such, cheated the complainant.

5. Upon perusal of the records, it is revealed that the complainant had entered into a contract with the accused company, and the furnace was duly installed. It is the allegation of the complainant that the accused used sub-standard material for the furnace, which resulted in it not functioning properly to their satisfaction, and there was a

delay in the installation of the furnace. The contents of the complaint suggest that it is a case of breach of contract. However, it is important to note that mere breach of contract does not warrant criminal prosecution under Section 406 or 420 of the Indian Penal Code unless fraudulent or dishonest intention is shown at the inception. In order to hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intentions at the time of making the promise. Mere failure to keep a promise without culpable intention right from the beginning cannot be presumed. The record suggests that the disagreement between the parties is commercial in nature and, at the most, could result in civil proceedings rather than criminal charges. The dispute can only be ascertained on the basis of evidence and documents by a Civil Court of competent jurisdiction. Furthermore, even if all the averments made in the complaint are taken to be correct, the case for prosecution u/Ss 406 and 420 IPC is not made out against the accused.

6. To establish the existence of factual ingredients that constitute an offence u/s 406 IPC, it is inherently required that the property be entrusted. This is followed by dishonest misappropriation or conversion of properties by the accused for personal use or disposal of property in violation of the law

that dictates how the entrustment should be handled. It could also involve a dishonest use or disposal of property in breach of any legal contract, either *express* or *implied*, concerning the handling of the entrustment of deliberately permitting another person to do so. To establish a charge under this Section the prosecution must prove both the entrustment of the property and one or more of the other alternatives mentioned above, with dishonest intent being the key element. However, in this case, no aspect of criminal breach of trust is evident.

7. As far as Section 420 IPC is concerned, it is necessary to demonstrate that the accused had fraudulent or dishonest intentions while making the promise. In the present case, the records show that the complainant purchased the furnace from the accused, and the dispute arose from this commercial transaction. The allegation in the complaint makes it clear that the dispute is of a civil nature and can be resolved through civil law. Even if all the allegations in the complaint are accepted as true, there is no evidence to support the prosecution u/s 420 IPC against the accused. There is nothing on record to suggest that the accused had a malafide intent at the inception of making the promise. Without a culpable intention, at the time of making a promise, no offence u/s 420

IPC can be established.

8. In *Indian Oil Corporation Vs. NEPC India Ltd.*¹, the Hon'ble Supreme Court raised concern about the growing tendency in business circles to convert purely civil disputes into criminal proceedings in the following words:

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal case. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of eminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri Vs. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed : (SCC p.643 para 8) “It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a shortcut of

1 (2006)6 SCC 736.

other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction u/s 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

9. Having gone through the complaint, it cannot be said that the averments/allegations in it against the accused constitute an offence under Sections 406 and 420 IPC.

10. In the result, the present application stands dismissed.

[R.N. Laddha, J.]