



Harish

WP-2172-2023-2.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2172 OF 2023**

Chhaya Chandrakant More & Others

...Petitioners

V/s.

The State of Maharashtra & Another

...Respondents

Mr. Ajay Veer Singh, Mr. Karthik Rajasekhar and Mr. Arif Sayed for the
Petitioners.

Ms. M. H. Mhatre APP for Respondent State.

**CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.**

DATE : 21th September, 2023.

P. C. (Per Sharmila U. Deshmukh J.):

1. Heard Mr. Ajay Veer Singh, learned counsel appearing for the
Petitioners, and learned APP for the Respondent-State.
2. The present Petition invoking jurisdiction of this Court under
Article 226 of Constitution of India is filed for quashing Chargesheet
No. 324 of 2022 arising out of FIR No. 588 of 2021 registered with the
Narpoli Police Station, Dist-Thane, for the offences punishable under
Section 406 and 407 read with Section 34 of the Indian Penal Code.
3. As the chargesheet came to be filed during the pendency of
the Petition, we pointed out to the learned Advocate for Petitioner that,
Petitioners are having alternate statutory remedy as contemplated under

the provisions of Cr.P.C. before the trial Court. The decisions of the Apex Court in the case of *Central Bureau of Investigation vs. Aryan Singh* (AIR 2023 SC 1987), *Manik B vs Kadapala Sreyes Reddy & Anr.* (2023 LiveLaw (SC) 642) and *Iqbal @ Bala and Ors. vs. State of U.P. and Ors.*, (2023 SCC Online SC 949) were brought to the notice of Mr. Singh. It was also pointed out to him that, the defence of the Petitioner cannot be tested in exercise of jurisdiction under Article 226 of India. Despite the settled legal position, Mr. Singh insisted on proceeding with the hearing.

4. Mr. Singh submitted that, the allegations in the FIR are that, the First Informant had handed over 219 cartons containing household goods in Kuwait to Transcontinental Shipping Services Company WSI Packing and Removals to be shipped to India; that 219 cartons were loaded in the container and instead of 219 cartons 208 cartons were delivered and nine cartons were delivered in damaged condition. He submits that the Petitioners are delivery agents and the liability is of the primary booking agent i.e. Transcontinental Shipping Services Company and that the cartons received from the clearing agents by the Petitioners were delivered to the First Informant. He would submit that, the dispute is civil in nature. He submits that the allegation is loss of goods worth about Rs 2,95,930/- whereas the insurance in respect of

damaged/missing goods is only to the extent of Rs. 30,000/-. He would urge that the offences as alleged are not attracted to the present case.

5. In the case of *C.B.I vs. Aryan Singh* (supra), the Apex Court held that while deciding an application under Section 482 of Cr.PC, the High Court cannot conduct a mini trial. That, as per the cardinal principle of law, at the stage of discharge and/or quashing of criminal proceedings, while exercising powers under Section 482 of Cr.PC, the Court is not required to conduct a mini trial. That, the Court has a very limited jurisdiction and is required to consider whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried.

6. In recent decision of *Manik B. vs. Kadapala Sreyes Reddy & Anr.*, (2023 LiveLaw (SC) 639) the Apex Court has held that, the Court would exercise its power to quash the proceedings only if it finds that taking the case at its face value, no case is made out at all.

7. We could have at the outset relegated the Petitioner to the alternate remedy of seeking discharge in view of the decision of the Apex Court in case of *Iqbal @ Bala and Ors vs. State Of U.P* (supra) where the Apex Court declined to interfere and held that the trial court should be allowed to look into materials which the investigating officer

might have collected forming part of the charge sheet. However, at the persistent insistence of learned counsel for Petitioner, we have proceeded with the hearing. We have perused the FIR and the chargesheet with the assistance of learned counsel for the Petitioner.

8. The FIR alleges that, on 1st July, 2021, the First Informant had handed over 219 cartons numbered as Box No.1 to 219 to a shipping company - Transcontinental Shipping Services Company WSI Packing and Removals in Kuwait, for being delivered to his premises at Panvel, Maharashtra, India. The cartons were loaded in a container for shipping and consideration paid was sum of 925 Kuwaiti Dinars equivalent to Rs. 2,26,625/-. It is further alleged that, on 31st July, 2021, M/s. Clintus Network Ltd informed the First Informant that, the goods shipped from Kuwait will be delivered after payment of charges of Rs. 71,388/- which was transferred online by the First Informant. That on 14th August, 2021, the Petitioner No. 1 came with other co-petitioners to the residence of the First Informant alongwith two trucks and while downloading the cartons from the truck, upon checking the cartons as per the list available with the Petitioner No. 1, it was found that, instead of 219 cartons only 208 cartons were delivered and out of the delivered cartons also, nine cartons were damaged. It is further alleged that, upon

enquiry, the Petitioner No. 1 informed the First Informant that, they had received only these cartons from the clearing agent. To the inquiry as to why less number of cartons was accepted from clearing agent, the First Informant did not receive any satisfactory explanation. As such the FIR in question came to be lodged for the alleged offences punishable under Section 406 and 407 read with Section 34 of the Indian Penal Code.

9. It is settled that while adjudicating the petition for quashing the FIR, the inquiry contemplated is whether any sufficient material is available to proceed further against the Accused. The allegations in the FIR prima facie indicates that, the cartons were handed over to the shipping company in Kuwait for onward transit to India, that at the time of delivery by the Petitioners 11 cartons were found missing and 9 cartons were delivered in damaged condition. The goods were received from the clearing agent by the Petitioners and the same were stored in a warehouse under the custody of Petitioner No 1. As delivery agents, the goods being entrusted in their custody, the responsibility lies with the Petitioners. The allegations prima facie indicate that the Petitioners have short delivered 11 cartons to the First Informant and 9 cartons were damaged while in custody of the Petitioners.

10. Learned Counsel for the Petitioner wants this Court to

examine the defence of the Petitioners that, the Petitioners had received less cartons from the clearing agent and some of the cartons were received in damaged condition. In these proceedings, the Petitioners wants this Court to determine the issue of liability as to whether the liability is of the primary booking agent or the delivery agent. As discussed above, it is not open for this Court in exercise of its jurisdiction under Article 226 to conduct a mini trial or examine the defence.

11. Section 405 of the Code of Criminal Procedure provides that whoever, being in any manner entrusted with property, or with any dominion over property, 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, commits "criminal breach of trust". The provisions of Section 407 provides for criminal breach of trust by carrier etc.

12. The allegations in the FIR prima facie indicate that, the cartons were entrusted by the First Informant, pursuant to the payment of consideration, to the company in Kuwait and as delivery agents the Petitioners had received the goods in India. As delivery charges, the

First Informant has parted with valuable consideration. As having been entrusted with the property there existed a legal duty to deliver the goods to the First Informant in proper condition, the offences under Section 405 and Section 407 of IPC are prima facie attracted in the present case. The allegations in the FIR reveals the complicity of the Petitioners in the alleged offences and strong prima facie case of breach of trust is made out. Further the filing of the charge sheet indicates that there is sufficient evidence to link the Petitioners with the alleged offences.

13. After considering the allegations in the FIR and principles of law laid down by the Apex Court as discussed above, we find that, a strong prima facie case against the Petitioners is made out. In our opinion, this is not a fit case to quash the FIR and further proceedings therefrom.

14. Petition is accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)