IN THE HIGH COURT OF JUD5ICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 496 OF 2021

Rajhoo Ambalal Bbarot & Anr. ...Applicants
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. M. M. Vashi, Sr. Advocate a/w. Ms. Aparna Devkar i/b M. P. Vashi & Associates for the Applicants
Ms. Shinde, A.P.P for the Respondent-State
Mr. R. S. Datar for the Respondent No. 2

CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ

DATED : 4th JULY, 2023

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

1. The Respondent No. 2/Complainant is in the business of cutting, loading and shifting of scrap materials and has operations through out the Country.

2. The Applicants are the Directors of the registered company Atlanta Limited who are into the infrastructure business. Through out the country for disposal of scrap generated at various sites of the said Company, the Applicants by virtue of a single work order dated 09/03/2019 in favour of the Respondent No. 2/Complainant who is the proprietor of M/s. Blue Diamond Scrap Traders came to be awarded.

3. The work order dated 09/03/2019 issued in favour of the Respondent No. 2 speaks of fulfillment of the condition of payment of security deposit of Rs.15,00,000/- which were subject to forfeiture in case if the firm of the Respondent No. 2 is engaged in unethical activities whatsoever.

4. It appears that the Respondent No. 2 alleging that inspite of the payment of cash of Rs.2,50,000/- and cheque of Rs.15,00,000/- the Applicants have failed to facilitate the delivery of the scrap as has been promised in the work order, which has led to the registration of the offence i.e. Crime No. 543 of 2020 punishable u/s. 406, 420 r/w. 34 of IPC on 28/10/2020. The basis for the aforesaid offence as narrated hereinabove is, the payment of an amount of Rs.17,50,000/- by the Respondent No. 2 and the failure on the Applicants in delivering/permitted lifting of the scrap to the Complainant.

5. The contentions of learned Counsel for the Applicants is, an offence came to be registered against the representatives of the Respondent No. 2 having practiced fraud in the matter of execution of the subject contract as could be inferred from the Complaint lodged on 10/08/2019 with SHO, Police Station, Doraha, State of Punjab. It is claimed that the said complaint is based on

the theft of iron scrap while executing of order of lifting of scrap from the yard of the Atlanta Company at Village-Begowal in Punjab State resulting into registration of the offence. It is claimed that the representative of the Respondent No. 2 was found to be stealing the scrap to the extent of 1575 KG in vehicle registration no. PB 23A 9888. According to learned counsel for the Applicants the registration of the aforesaid offence in August, 2019 ought to have been disclosed by the Respondent No. 2 when the complaint came to be lodged with the Respondent No. 1-Police Station, who has no jurisdiction over the investigation of the offence in question as no part of the offence has taken place within its territorial jurisdiction.

6. According to Mr. Vashi, learned Senior Counsel appearing for the Applicants, the fact remains that the amount of Rs.15,00,000/- as has been reflected in the FIR was received towards earnest money deposit/security deposit and regulation of the same was subject to the conditions mentioned in the agreement dated 09/03/2019. He would urge that since the aforesaid registration of the offence against the representatives of the Respondent No. 2 is arising out of the contractual obligations between the company of the Applicants and the Respondent No. 2, the Applicants were

justified in forfeiting the security deposit of Rs.15,00,000/-. He would further urge that the Respondent No. 2 never paid an amount of Rs.15,00,000/- in addition to an amount of security deposit of Rs.15,00,000/- referred supra in the communication dated 09/03/2019 nor the amount of Rs.2,50,000/- was paid in cash to the Applicants. He would specifically urge that the claim putforth by the Respondent No. 2 in his notice that the scrap was permitted to be lifted by the representatives of the Respondent No. 2 was never introduced nor supported or sponsored by the Company of the Applicants or by the Applicants themselves. As such, the contentions are, not only the offence alleged is born of out of contractual obligations but also the complaint is false at its face value. He would urge that necessary ingredients of the offence punishable u/s. 406, 420 r/w 34 of the IPC cannot be inferred from the contents of the FIR and other material place on record.

7. Mr. Datar, learned counsel appearing for the Respondent No. 2/Complainant would draw support from the judgment of the Apex Court in the matter of ***Satvinder Kaur vs. State (Govt. of NCT of Delhi) and Another*** reported in ***(1999) 8 SCC 728*** *so* as to claim that even if the Respondent No. 1/Police Station is said to

have no jurisdiction, after registration of the offence the investigation can be transferred to the appropriate police station having jurisdiction. According to him, the office of the Respondent No. 2 is located within the jurisdiction of the Respondent No. 1-Police Station and as such the registration of offence is justified.

8. His next contention is, even if contractual relations between the Respondent No. 2/Complainant and the company-Atlanta of which the Applicants are Director exist still, the fact remains that the amount was duly received by the Applicants and the scrap was not permitted to be lifted or provided as could be inferred from the contents of the complaint and the investigation papers.

9. He would further urge that the Respondent No. 2 by keeping his rights reserved to initiate recovery proceedings before the competent Civil Court against the Applicants can always take recourse to the remedy of filing of criminal complaint for the offence punishable u/s. 406, 420 r/w. 34 of IPC. He would further urge that at this stage of the proceedings, the Court is not supposed to appreciate the evidence so as to form an opinion that the necessary ingredients of the offence alleged cannot be inferred or satisfied. As such, he would urge that the Application is liable to be dismissed.

10. We have appreciated the aforesaid submissions.

11. The contract entered into between the Applicants' company and the Respondent No. 2 proprietary concern as reflected in the communication dated 09/03/2019 is not in dispute in the present proceedings. It is also not in dispute that the amount of Rs.15,00,000/- was deposited by the Respondent No. 2 with Atlanta Company towards security deposit as against the work order dated 09/03/2019 issued to the Respondent No. 2 for lifting and disposal of scrap from the various sites of Atlanta Company through out the country. It can also be inferred from the record that the Clause 5 of the aforesaid work order dated 09/03/2019 provides that the security deposit of Rs.15,00,000/- was liable to be forfeited in case if the Respondent No. 2 is found to be indulging in unethical business activity.

12. In the aforesaid background, learned Senior Counsel for the Applicants, Mr. Vashi has rightly relied on the undisputed fact of registration of the offence against the proprietor of one J. V. Traders Ganesh, and his driver when both were caught red handed in Punjab while stealing the scrap from the yard of Atlanta Company. Said act of the representative of the Respondent No. 2 is contrary to the very terms of the contract dated 09/03/2019 as

the Respondent No. 2 was found to be involved in unethical business activity.

13. Of course the Respondent No. 2 or his representative has every right to question the registration of the offence in the State of Punjab in the matter of registration of offence of theft of scrap material from the Atlanta Company, however, the fact can be born out of the record that *prima facie* there was a breach of contract by the Respondent No. 2 in view of registration of offence referred above, which has led to the decision of forfeiture of the security deposit by the Atlanta Company of which the Applicants' are the Directors.

14. As regards the payment of cash of Rs.2,50,000/- by the Respondent No. 2 as has been alleged in the complaint is concerned, we hardly see any evidence to that effect on record so as to form an opinion that the amount to the tune of Rs.2,50,000/- in cash was paid to, or received by the Applicants for Atlanta Company.

15. As such, the FIR and the charge-sheet filed against the Applicants of which quashing is sought is purely based on the contractual obligations arriving out of work order dated 09/03/2019.

16. Apart from above, the most important issue which this Court is required to be sensitive to is, when the FIR was lodged by the Respondent No. 2 of which quashing is sought, the fact about registration of the offence of theft against the representatives of the Respondent No. 2 was a fact within the knowledge of the Respondent No. 2. The Respondent No. 2 has suppressed the said fact from the investigating agency by not mentioning the same in complaint. The aforesaid conduct of the Respondent No. 2 of suppressing material fact about registration of offence has an adverse effect on the issue of registration of the offence against the Applicants. The aforesaid suppression speaks of very ill-intention and malafide approach on the part of the Complainant of taking recourse to remedy of criminal prosecution against the Applicants without their being supporting evidence.

17. In the aforesaid background, it has to be inferred that the prosecution initiated against the Applicants at the behest of the Respondent No. 2 is not only arsing out of the contractual obligations but also satisfaction of necessary ingredients of Section 406, 420 r/w. 34 of IPC cannot be inferred.

18. In case if the offence of cheating is to be inferred, what is required is the Accused should have dishonestly induced the

person so deceived to either deliver the property to any person or make alter or destroy wholly or in part the valuable security. In the case in hand, it is claimed that the Applicants allegedly promised the Complainant to deliver the property and accepted the money. However, the element to deceive the Complainant cannot be inferred from the factual matrix of the case in hand. The Applicants never made any false or misleading representation to the Complainant or has made any dishonest or fraudulent inducement to deliver the property. Rather the registration of the offence against the Respondent/Complainant sufficiently speaks of his intention of himself involved in an offence and suppressing the same from this Court.

19. As such, the conduct of the Respondent gives rise to form an opinion for this Court that the criminal proceedings are initiated by the Respondent with an intention to abuse the process of the Court and the law. So as to prevent the abuse of process of the Court, it is always open for this Court to exercise the jurisdiction u/s. 482 of Cr.P.C which protect the inherent powers of the Court.

20. The forgoing factual observations depicts that the criminal prosecution initiated by the Respondent/Complainant as a weapon of harassment against the Applicants, the FIR in our opinion in

view of the conduct of the Respondent narrated above does not disclose the offence which warrants even the charge-sheeting of the Applicant though they are charge-sheeted.

21. The Respondent/Complainant appears to have taken recourse to a short cut method of filing criminal complainant and thereafter getting the Applicants charge-sheeted instead of taking the recourse of the civil proceedings, particularly in view of the the terms of the work order dated 09/03/2019.

22. From the very conduct of the Respondent No. 2, it is apparent that the Respondent No. 2 not only suppressed the material fact from the investigation machinery but has also tried to misuse the police machinery for his personal gain.

23. Apart from above, it will not be out of place to mention here that the fact about no cause being occurred within the jurisdiction of the Respondent No. 1 - Police Station for registration of the offence and investigation therein can be inferred from the contents of the FIR. Though the Respondent No. 2 in the FIR has claimed that his office is situated within the jurisdiction of the Respondent No. 1- police station, however, the fact remains that the contract was entered into by the company of the Applicants with the Respondent No. 2 at Kurla and not within the jurisdiction

of the Respondent No. 1-Police Station. The concerned Sr. PI on whose instructions the offence came to be registered has exceeded his authority in registration of the offence and carrying out the investigation. Instead of registration of the offence, it was open for the said Sr. PI or the investigating officer to transfer the same to the appropriate police station who has jurisdiction to investigate the alleged offence if a cognizable offence is disclosed from the contents of the complaint. The Respondent No. 1 has failed to do so.

24. In view of the aforesaid observations, reliance placed by Mr. Datar, learned counsel for the Respondent No. 2 in the matter of ***Satvinder Kaur*** (supra) will be of hardly any assistance. Rather the said officers have exceeded powers in the matter of registration of the offence and illegally carrying out the investigation.

25. Relying on the judgment of Apex Court in the matter of ***State of Haryana and Others vs. Ch. Bhajan Lal and others*** reported in ***AIR 1992 SC 604***, it will be appropriate to infer that the prosecution initiated against the Applicants is liable to be quashed particularly when the same is initiated with purely malafide intentions by the Respondent No. 2

26. For the aforesaid reason, we deem it appropriate not only to quash the offence against the Applicants but also the charge-sheet.

27. That being so, the Application stands allowed in terms of prayer clause 24(a)(1).

(R. N. LADDHA, J) **(NITIN W. SAMBRE, J.)**