IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 570 OF 2023

Haider Abbas ...Applicant
V/s.
The State of Maharashtra and Anr. ...Respondents

WITH
CRIMINAL APPLICATION NO. 572 OF 2023

Laldhar Shivprasad Chouhan ...Applicant
V/s.
The State of Maharashtra and Anr. ...Respondents

Mr. M. Ramesh for the Applicants in both Applications.
Mr. S.S. Hulke, APP for the Respondent No.1-State.
Mr. Abdullah Katlariwala for Respondent No.2.

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

DATE : 4th October, 2023.

ORDER : (Per Sharmila U. Deshmukh, J.)

1. Heard Mr. M. Ramesh, learned counsel for the Applicants, Mr.Hulke, learned APP for Respondent No.1-State and Mr. Katlariwala, learned counsel for Respondent No.2.

2. The present Applications invoking jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 seeks quashing of RCC No.567 of 2022, pending on the file of learned Judicial Magistrate First Class, Sangola, District Solapur, arising out of CR No.I-1116 of 2021, registered with Sangola Police Station, Solapur Rural

for the offences punishable under Sections 420, 406, 504, 506 read with Section 34 of the Indian Penal Code, 1860. The Applicants being arraigned as accused in the same crime, the Applications were heard together and are being disposed of by this common Order.

3. At the inception of the hearing, the decisions of the Apex Court in the case of *Central Bureau of Investigation vs. Aryan Singh (AIR 2023 SC 1987)* and *Manik B vs Kadapala Sreyes Reddy & Anr. (2023 LiveLaw (SC) 642)*, were pointed to the learned Advocate for the Applicants. Despite the settled legal position being brought to his notice, Mr. M. Ramesh learned Advocate for the Applicants, insisted on proceeding with the hearing and as such we have heard him at length.

4. Mr. M.Ramesh, submitted that, the dispute between the parties is civil in nature. He would submit that, in fact, the Respondent No.2, has perpetrated fraud upon the Applicants by falsely claiming that the loan was required for school building. According to him, the allegation of misleading the Respondent No.2 based on false documents of Reserve Bank of India, has no merits as the alleged letter of the Applicants to the RBI is dated 14th September, 2021, which is subsequent to the payment of Rs.10 lakhs by the Respondent No.2. He would further submit that, the Respondent No.2 forced Laldhar Chauhan (Applicant in Criminal Application No.572/2023) to issue him cheques and has falsely shown

him as a guarantor, whereas the agreement executed between Applicant-Haider Abbas and the Respondent No.2 would indicate that Laldhar Chauhan was witness to the agreement. He further submits that, no offence under Section 406 has been made out as there is no breach of trust. He would further urge that, the Applicant Haider Abbas was forced to transfer Rs.10 lakhs to the Respondent No.2, however, the same has not been disclosed in the chargesheet.

5. *Per contra*, Mr. Katlariwala, learned Advocate for Respondent No.2 submits that, the defence of the Applicants cannot be permitted to be examined in an Application under Section 482 of the Code of Criminal Procedure, 1973. He would further urge that, considering that the chargesheet has already been filed, this Court may not exercise its powers under Section 482 of the Cr.P.C.

6. 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.P.C, 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.P.C, 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.

7. In recent decision of *Manik B.* (supra), the Apex Court has held that at the stage of deciding an application under Section 482 of the Cr.P.C., it is not permissible for the High Court to go into the correctness or otherwise of the material placed by the prosecution in the chargesheet. That the scope of interference, while quashing the proceedings under Section 482 of Cr.P.C, is very limited. That the Court would exercise its power to quash the proceedings, only if it is convinced that taking the case at its face value, no case is made out at all.

8. In light of this settled legal position, we have considered the submissions and perused the chargesheet and other documents. The case of the prosecution as spelt out in the FIR is that Haider Abbas was introduced to the Respondent No.2 by Laldhar Chauhan. In the year 2019 the Respondent No.2 was in need of financial assistance of Rs.20 Crores for construction of school building. That Laldhar Chauhan informed the Respondent No.2 that Haider Abbas Rizvi is in the business of getting the loans sanctioned through international finance company and showed false documents of RBI as regards foreign remittance from Dubai. Assuring the Respondent No.2 of getting the loan sanctioned, Laldhar Chauhan demanded a sum of Rs.10 lakhs as processing fees and an agreement was executed with Haider Abbas on 25th July, 2019 in which it was agreed that within a period of 90 days, Laldhar and Haider

would get the loan sanctioned. Relying upon the assurance given by Laldhar Chauhan and Haider Abbas, a sum of Rs.10 lakhs was transferred by RTGS by the Respondent No.2. Upon verification of the documents of RBI by the Respondent No.2, the documents were found to be false. The loan was not sanctioned with the stipulated period.

9. The first informant sought refund of the amount of Rs.10 lakhs and Laldhar Chauhan accepting the responsibility, executed writing dated 13th February, 2021 on stamp paper of Rs.100/- and on the same day paid cash amount of Rs.45,000/- and issued cheque of Rs.55,000/ which was honoured. For the balance amount of Rs.9,00,000/-, Laldhar Chauhan issued a cheque which when presented for encashment on 15th June, 2021, came to be dishonored. It is further alleged that, upon demand of the refund of the amount, the Applicants have time and again given threats to the first informant and have threatened to kill him. That the Applicants being acquainted with anti social elements, the risk to the life of the first informant is created.

10. The submission canvassed by Mr. M. Ramesh is that, taking the allegations in the FIR at its face value, no case at all is made out. Perusal of the FIR prima facie indicates that the Applicants assured the Respondent No.2 of getting financial assistance of Rs.20 Crores sanctioned through international finance institution and to gain his

confidence and to induce him to part with substantial amount of Rs.10 lakhs under the guise of processing fees, a written contract was entered into and documents of Reserve Bank of India regarding foreign remittance from Dubai were shown. The allegation is that the documents of RBI are false and the refund cheque of Rs.9,00,000/- has been dishonoured. It is further alleged that upon demand of refund of sum of Rs.10,00,000/- the Applicants have threatened to kill the Respondent No 2.

11. If we consider the sum and substance of the allegations in the FIR, prima facie the intention to deceive from inception is writ large. To gain the confidence of Respondent No.2 and to induce Respondent No.2 to part with money, who was in need of financial assistance, false documents of RBI of foreign remittance from Dubai were shown and written contract was entered into with no intention to honour the commitments. This is prima facie indicated from the fact that no foreign remittance was received by the Applicants. The dishonour of the cheque for refund issued by Laldhar Chauhan prima facie reveals the intention to deceive. It needs to be noted that the lodgment of crime was pursuant to an order under Section 156(3) of Cr.P.C.

12. An offence under Section 406 of IPC is attracted when a person entrusted with property dishonestly misappropriates or converts to his

own use the property in violation of any legal contract, express or implied. In the instant case, an amount of Rs.10 lakhs has been taken as processing fees assuring sanction of loan of Rs.20 lakhs. No loan was sanctioned in favour of Respondent No.2 and the amount taken as processing fees was misappropriated. Prima facie the ingredients of Section 406 are attracted in the instant case. As regards the applicability of Section 420 of IPC, as indicated above intention to deceive since inception is revealed from the act of showing false documents of RBI as regards foreign remittance. The execution of agreement with Haider Abbas and the issuance of the refund cheque by Laldhar Chauhan of Rs.9 lakhs, which was dishonoured when presented for encashment, prima facie reveals the complicity of both the Applicants in the alleged offences. Viewing the applicability of Section 34 of IPC, we do not find any force in the contention of Mr. M. Ramesh that FIR against Laldhar Chauhan is required to be quashed as he was a witness to the agreement and not guarantor.

13. The submissions canvassed across the bar falls in the realm of defence of the Applicants. Mr. M. Ramesh wants this Court to consider the defence of the Applicants as regards the communication with RBI being subsequent to the payment of Rs.10 lakhs, suppression of the SARFEASI proceedings and repayment of more than the amount of Rs.10 lakhs by the Applicants to falsify the allegations in the FIR.

Considering the note of caution struck by the Apex Court in various decisions, we are not inclined to examine the defence as the same would amount to conducting a mini trial. Similarly in exercise of jurisdiction under Section 482 of Cr.P.C., this Court is not expected to test the veracity of the allegations in the FIR. Learned Advocate for Applicants has not been able to demonstrate that reading the allegations in the FIR as it is, no case of alleged offences is made out. As the chargesheet has been filed, it can be assumed that there is sufficient evidence to link the accused with the offence alleged.

14. 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.

15. Both the Applications are dismissed.

(SHARMILA U. DESHMUKH, J.) **(A.S. GADKARI, J.)**