BDP-SPS-TAC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2165 OF 2023

Percy Faramroz Lakadia ....Petitioner

V/s

The State of Maharashtra and Ors. .....Respondents

Mr. Aditya Iyer a/w Advait Helekar, Hrutvik Patil, Kavisha Shah i/b India Law Alliance for the Petitioner.

Smt. A.S. Pai, PP a/w M.H. Mhatre, APP for the Respondent/State

Complainant's son Mr. Sachin Jahangir Wadia present in Court.

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

DATE: JULY 10, 2023

P.C.:-

1] Petitioner has invoked provisions of Section 482 read with Article 226 of the Constitution of India with following prayer :-

> "a) This Hon'ble Court be pleased to quash and set aside C.R. No.174 of 2022 dated 6th April, 2022 registered by Tardeo police station for offences punishable under Section 406 and

> 420 read with Section 34 of the IPC and Chargesheet resulting in C.C. No.69 of 2023 pending before the Ld. Metropolitan Magistrate 4th Court at Girgaon, for offences punishable under section 406 and 420 read with Section 34 of the IPC."

2] Facts necessary for deciding this Petition are as under:-

3] Respondent No.2 has lodged a complaint on 06/04/2022 alleging that the Petitioner alongwith other partners have agreed to purchase property for consideration of Rs 5 crores and accordingly entered into agreement pursuant to E-mail received by her son on 02/07/2020. According to Respondent No.2, said agreement was notarized.

4] Instead of making payment of Rs 5 crores towards consideration of property of the complainant, Petitioner alongwith co-accused made Respondent No.2 to invest Rs 50 lakhs in their Company Persepolis Mines Pvt Limited. As neither the agreement of sale of the property of Respondent No.2 was materialized nor investment of Rs 50 lakhs was profiteered, Respondent No.2 – complainant sought refund of Rs 50 lakhs. Instead of refunding the amount of Rs 50 lakhs, Petitioner has assured to give gold biscuits and X-ray Goggle, which was also not honoured. In this backdrop, it is claimed that the Petitioner alongwith co-accused has committed aforesaid offence which was registered as Crime No. 174 of 2022 punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code. Accordingly, investigation was set in motion and the Petitioner alongwith other two co-accused came to be chargesheeted. Petitioner is shown as Accused No.1 in the proceedings.

5] Counsel for the Petitioner would urge that Respondent No2-complainant and her son are the accused against whom offence being Crime No.204 of 2017 punishable under Sections 404, 419, 420, 465, 467, 468, 471 read with Section 120B and 34 of the Indian Penal Code came to be registered with Worli Police Station in which they are on bail. According to him, the said complainant has made false representation and made the Petitioner and one Raval to enter into agreement for purchase through MOU. He would urge that Petitioner has never promised delivery of gold biscuits and X-ray Goggle, as has been alleged in the FIR. According to him, Respondent No.2-complainant has already received an amount of Rs 14 lakhs from daughter of the Petitioner on 25.04.2022 and 26.4.2022. It is further claimed that cheques issued in favour of Respondent No.2-complainant by the Petitioner which were dishonoured were towards non-admitted liability and the Respondent No.2-complainant alongwith her son are using the proceedings so as to twist the arm of the Petitioner. It is the contention of Counsel for the Petitioner that the Petitioner who is a senior citizen if required to face trial before the Court of Magistrate in the aforesaid offene, will amount to permitting gross abuse of process of law by the Respondent No.2-complainant and such proceedings shall cause irreversible harm to the Petitioner. It is further claimed that perusal of FIR and material available on record does not satisfy very ingredients of the offence punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code.

6] As against above, learned Public Prosecutor Mrs. Pai assisted by learned APP Mrs. Mhatre would urge that contents of the FIR disclose the cognizable offence and as such offence came to be registered and investigated into. She has invited our attention to the statement of the witnesses such as Rajan Yashwant Manjalkar, Sachin Jahangir Wadia, Prabhakar Dandekar, so also statement of the accused persons acknowledging the liability. According to her, it is an admitted fact that cheques issued in favour of the Respondent No.2-complainant by the Petitioner were dishonoured and as such, there is presumption as to the offence being committed by the Petitioner under the Negotiable Instruments Act. Aforesaid submissions are adopted by son of Respondent No.2-complainant who is present in Court.

7] We have appreciated aforesaid submissions.

8] From the perusal of FIR, it is apparent that Petitioner has accepted amount of Rs 50 lakhs from Respondent No.2-complainant. Since the cause for which the said amount of Rs 50 lakhs was accepted was not honoured, perhaps the same has prompted the Petitioner to issue post-dated cheques in favour of Nisha Ghosh. We are informed that Nisha Jetithor and Nisha Ghosh is one and the same person as is apparent from the affidavit and Government Notification placed on record. Aforesaid cheques which were issued for an amount of Rs 25 lakhs and Rs 24,29,000/- on 11/10/2021 and 29/09/2021 were dishonoured. Admittedly, said cheques were issued by the Petitioner and there is presumption that same were issued towards admitted debt. Apart from above fact remains that witnesses named above viz. Sachin Wadia, Prabhakar Dandekar sufficiently support the case of the prosecution. The independent witness Rajan Yashwant Manjalkar has categorically stated about conduct of the Petitioner of defrauding the people.

9] Petitioner and co-accused Krushnakant Raval in their statements have stated that they have accepted aforesaid amount of Rs 50 lakhs and were to return the same in installments. As far as aforesaid statements are concerned, same are self incriminating and cannot be relied on. However statements made by witnesses coupled with the fact that cheques issued by the Petitioner in favour of Respondent No.2-complainant were dishonoured, sufficiently speaks of involvement of the Petitioner in the case as the case of presumption as to admitted debt can be inferred. That being so, no case for causing interference is made out. Petition fails and same stands dismissed.

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