IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1959 OF 2016

Hatim Glazing & Cladding Pvt. Ltd.
a Company incorporated under the
Companies Act, 1956,
Through its Authorized representative
Shoaib S. Batish
Aged 48 years, Occ: Service
Both having address at 19, Sant Savta Marg,
Near Bajaj Electronicals, Reay Road,
Mazgaon, Mumbai- 400 010 ....Petitioner
(Original Complainant)

V/s.

1). State of Maharashtra
Through Senior Inspector of Police
Byculla Police Station
Sir J. J. Hospital Compound,
Sir J. J. Road, Byculla,
Mumbai – 400008

2). M/s. Concepts Distribution Company
Address: 1st Floor, Temple View,
Vacha Gandhi Road, Opp. Ratan Tata
Institute, New Gamdevi
Grant Road (w), Mumbai- 400 007.

3). Chetan Dukle (full name not known)
Age: Not known, Occ: Business

Authorized signatory of M/s Concepts
Distribution Company
1st Floor, Temple View, Vacha Gandhi
Road
Opp. Ratan Tata Institute New Gamdevi
Grant Road (w), Mumbai- 400 007.

4). Samir Desai (full name not known)
Age: Not known, Occ: Business
Authorized signatory of M/s. Concepts
Distribution Company
1st Floor, Temple View, Vacha Gandhi Road
Opp. Ratan Tata Institute New Gamdevi
Grant Road (w), Mumbai- 400 007. ….Respondent Nos.2,3 & 4 (Original Accuseds)

Mr.Mikdad Aziz Zummerwala for the petitioner.
Ms S.D.Shinde, APP for State/respondent No.1.
Ms Uma Kshirsagar Wagle for the respondents No.2 and3.

Coram: R.N.Laddha, J.
Date: 23 October 2023.

P.C.:

The petitioner has filed this petition to challenge the order passed on 06.04.2016 by the learned Additional Sessions Judge for Greater Mumbai in Criminal Revision Application No.1257 of 2015. This order confirmed the order dated 01.09.2015 passed by the learned Metropolitan Magistrate, 25th Court, Mazgaon, at Sewree, Mumbai, in CC

No.42/SW/2015, dismissing the petitioner's complaint against the respondents and rejecting the prayer for issuance of a process against them.

2. The petitioner, Hatim Glazing and Cladding, is a private limited company dealing in glazing systems, cladding, glass facades, doors, automatic doors, casements, windows, shower cubicles, frameless partitions and related works. It is stated that in 2012, the respondents approached the petitioner with a proposal to sell onduline roof sheets with a premeditated criminal intention. They made a false representation that the sheets would give a cooling effect, and as a result, interiors would remain cool. Upon this representation, the petitioner purchased the sheets worth Rs.5,70,225/-. After the delivery of the sheets, the petitioner engaged labourers to fix those sheets by spending a huge amount. However, immediately after the fixation of the sheets, they started melting, and some were blown away by the wind. The petitioner attempted to contact the respondents and tried to draw their attention to the condition of their sheets, but its efforts were in vain. When the petitioner realised that they were deceived by the respondents, they initially approached the Byculla police station and thereafter filed a private complaint against the respondents for the offence punishable under Sections 406

and 420 of the Indian Penal Code (IPC).

2. After verification of the statement from the authorised representative of the petitioner Company and after hearing the learned Counsel for the petitioner, the learned Judicial Magistrate, First Class, refused to issue a process against respondents and dismissed the complaint under Section 203 of the Code of Criminal Procedure, 1973 (CrPC). The petitioner challenged the order dated 01.09.2015 by filing a revision being, Criminal Revision Application No.1257 of 2015. By an order dated 06.04.2016, the Additional Sessions Judge, Mumbai, confirmed the order dated 01.09.2015 passed by the learned Magistrate and dismissed the Revision Application.

3. Being aggrieved by the aforesaid order of learned Additional Sessions Judge, the petitioner is before this Court in this petition under Section 482 of CrPC.

4. Mr Mikdad Zummerwala, the learned Counsel for the petitioner, submits that on perusal of the complaint and the verification statement of the authorised representative of the petitioner/company, it would be sufficient to conclude that a *prima facie* case for the offence under Sections 406 and 420

IPC, has been made out and, therefore, interference with the impugned order is necessary. He submits that the petitioner, in its complaint and verification, has categorically stated how deception has been played upon the petitioner by respondents. He submits that simply because there is a remedy provided for breach of contract does not by itself clothe the Court to conclude that civil remedy is the only remedy available to the petitioner. He submits that averments in the complaint and the verification statement would be sufficient to conclude, at this stage, that the ingredients of the offence under Sections 406 and 420 IPC are *prima facie* made out. According to learned Counsel, it is not necessary to reproduce in the complaint and the verification statement all the ingredients of the offence, nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest and fraudulent.

5. According to Ms Uma Kshirsagar Wagle, the learned Counsel representing the respondents, there is nothing on record to show alleged defects in the sheets. In her view, the dispute can only be ascertained on the basis of evidence and documents by a civil Court of competent jurisdiction, and initiation of criminal proceedings in such case is an abuse of the process of law. Furthermore, even if all the averments

made in the verification statement are taken to be correct, the case for prosecution under Sections 406 and 420 IPC is not made out against the respondents.

6. This Court has carefully considered the submissions made at the Bar and perused the material on record.

7. For showing *prima facie* existence of factual ingredients constituting the offence under Section 406 IPC, it inherently requires the property to be entrusted. This is followed by dishonest misappropriation or conversion of property by the agent 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 or 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.

8. As far as Section 420 IPC is concerned, it is necessary to

demonstrate that the accused/respondents had fraudulent or dishonest intentions while making the promise. In the present case, the records show that the petitioner purchased sheets from the respondents, and the dispute arose from this commercial transaction. The allegations in the complaint and the verification statement make 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 and the verification are accepted as true, there is no evidence to support the prosecution under Section 420 IPC against the respondents. There is nothing on record to suggest that the applicant had a *malafide* intent. Without a culpable intention at the time of making a promise, no offence under Section 420 IPC can be established. It is a settled position in law that even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making the promise, no offence under Section 420 IPC can be said to have been made out. In the present case, there is nothing on record to indicate that the respondents had any *malafide* intention against the petitioner. Additionally, nothing is on record to show that the disputed sheets were faulty. The records show that the respondents supplied goods to the petitioner, and the dispute arose from this commercial transaction. Moreover, as can be seen from the impugned order, while purchasing the sheets, the petitioner had inspected the same and then only purchased and installed the same upon its factory. The dispute appears to be with respect to the quality of roofline sheets, which has nothing to do with the entrustment of the property or inducement with dishonest intention at the hands of the respondents to the petitioner.

9. In ***Indian Oil Corpn. v. 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 cases. 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 UP [(2000) 2 SCC 636 : 2000 SCC (Cri)*

1 (2006) 6 SCC 736.

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 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 led 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."

10. In the circumstances, both the learned lower Courts have rightly concluded that the alleged facts in the complaint and the verification statement do not constitute any criminal offence against the respondents.

11. As a result, the petition stands dismissed.

[**R.N. Laddha, J.**]