

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPLICATION NO. 727 OF 2022

Kishor Venkatrao Sathe,
Age: 62 years, Occ.: Business,
R/o: Srinagar (shivnagar) Colony, Udgir,
Tal: Udgir, Dist: Latur. ... Applicant

Versus

1. The State of Maharashtra,
Through the Investigating Officer,
Mohol Police Station,
Tq. Solapur, Dist. Solapur.

2. Vanita Bapuji Vhatkar
Age: 47 years, Occ.: Agri,
R/o. at flat no.A-1/02 Ravi Park,
Jagtap Chowk, near Parmar Park
Wanwadi, Pune. Tq & Dist – Pune.
PinCode – 411040. ... Respondents

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Ms Kavita Bhale i/by Deepak Pote for the Applicant.

Mr J. P. Yagnik, APP for the Respondent No.1-State.

Mr Nikhil Wadikar a/w Faiza Shaikh i/by Nandu Pawar for the
Respondent No.2.

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

DATE : 22 JUNE 2023

Order (Per R. N. Laddha, J.) :-

Heard learned counsel for the parties.

2. Rule. The Rule is made returnable forthwith, with the consent of and at the request of the learned counsel for the parties.

3. The second Respondent lodged the FIR bearing No.454 of 2022 with the Mohol Police Station, Solapur (Rural), against the Applicant for the offence punishable u/s 420 of the Indian Penal Code. By this Application u/s 482 of the Criminal Procedure Code, the Applicant seeks to quash the FIR on the premise that the complaint did not disclose the offence and the dispute can only be ascertained on the basis of evidence and documents by a Civil Court of competent jurisdiction.

4. The Applicant is the proprietor of the firm 'Sai Solar System' which manufactures agricultural forestry machinery and sells solar base bio mark shredders and vacuum base automatic jaggery plants etc. In 2019, the complainant, who is Respondent No.2 in this Application, approached the Applicant for the purchase of agricultural machinery and

requested to give a quotation. Accordingly, on 22.9.2020, by email, a quotation was given, and the offer was subsequently accepted on 23.09.2020. In the quotation, all the specifications, terms and conditions are mentioned, and the conditions were accepted by the second Respondent.

5. According to the Applicant, he supplied equipment to the tune of Rs.62,00,000/- to the second Respondent. The GST bill was generated and credited to the second Respondent's account. As per the payment terms, 60% amount was paid in installments, and the remaining 40% amount was to be paid prior to delivery which the second Respondent did not pay. Due to non-payment of the full consideration amount, some of the important accessories and specifications mentioned in the clause are yet to be supplied.

6. It is submitted that the second Respondent assembled the machine as per her wish, and the Applicant did not supervise the assembled machine. It is submitted that the second Respondent sent an email on 24.2.2021 to the Applicant and asked for a hand-loan of Rs.15,00,000/- and again asked for a hand-loan which was time to time increased upto Rs.19,40,000/- and points out the emails and the bank

statements annexed to this Application.

7. It is submitted that the disagreement between the parties is commercial in nature and, at the most, could result in civil proceedings rather than criminal charges. It is submitted that without informing the alleged defects in the machines and without invoking the provisions of Clause 16 of the offer letter (Exh.'B'), the second Respondent filed the impugned FIR. 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 this case is an abuse of the process of the Court. Furthermore, even if all the averments made in the FIR are taken to be correct, the case for prosecution u/s 420 IPC is not made out against the Applicant.

8. On the other hand, Mr Nikhil Wadikar, representing Respondent No.2, submitted that the allegations in the FIR satisfied the ingredients of Section 420 of the IPC as the Applicant intentionally deceived the second Respondent into a belief that the machinery was made for a certain specification, and thus, dishonestly induces to buy and pay for the machinery. According to learned Counsel, it is not necessary

to reproduce in the complaint 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.

9. We have carefully considered the submissions made at the Bar and perused the material placed on the record.

10. In *Indian Oil Corporation Vs. NEPC India Ltd. & Ors. (2006) 6 SCC 736*, 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 interests 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 imminent 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 v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 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 short cut 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 laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 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.”

11. Similarly, in ***Vijay Kumar Ghai & Ors. Vs. State of West Bengal & Ors. (2022) 7 SCC 124***, the Hon’ble Supreme Court made the following observations :

25. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in *Indian Oil Corpn. [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188]* noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that : (*Indian Oil Corpn. case [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188]* , SCC p. 749, para 13)

“13. ... 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.”

35. To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:

- (i) The representation made by the person was false.
- (ii) The accused had prior knowledge that the representation he made was false.
- (iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.
- (iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

40. Having gone through the complaint/FIR and even the charge-sheet, it cannot be said that the averments in the FIR and the allegations in the complaint against the appellant constitute an offence under Sections 405 and 420IPC, 1860. 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 promise being absent, no offence under Section 420IPC can be said to have been made out. In the instant case, there is no material to indicate that the appellants had any mala fide intention against the respondent which is clearly deductible from the MOU dated 20-8-2009 arrived at between the parties.

12. It is important to note that in order to find someone guilty under Section 420 of the Indian Penal Code, it is

necessary to demonstrate that they had fraudulent or dishonest intentions while making the promise. In the present case, the records show that the second Respondent purchased machinery from the Applicant, and the dispute arose from this commercial transaction. The allegations in the FIR 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 FIR are accepted as true, there is no evidence to support a prosecution under Section 420 of the IPC against the Petitioner. There is no evidence to suggest that the Applicant had a malafide intent. Without a culpable intention at the time of making promise, no offence under Section 420 of the IPC can be established. In such circumstances, to prevent abuse of the process of Court, and to ensure justice, it becomes imperative to quash the impugned FIR.

13. In the result, the Application stands allowed in terms of prayer clause (B), which reads thus.

“(B) This Hon’ble Court may be pleased to quash and set-aside the FIR bearing Crime No.0454/2022 registered at Mohol Police Station, Dist-Solapur on dtd.25.05.2022 for offences punishable u/sec. 420 of Indian Penal Code.”

R. N. LADDHA, J.

NITIN W. SAMBRE, J.