IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2112 OF 2023

Dhurandhar Awadhnarayan Singh ...Applicant
vs.
The State of Maharashtra ...Respondent

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Adv. Akash Giri a/w Anjali Chitta and Amit Singh -Advocate for the Applicant
Mr. H. J. Dedhia - APP for the Respondent-State

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CORAM : S. M. MODAK, J.

DATE : 10th AUGUST, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP.

2. The offence is registered at Kasarwadavli Police Station on 20/06/2023, under Sections 406, 420, 465, 467 and 471 of the Indian Penal Code. It is on the complaint of Vijay Lanjewar. The first informant and the Applicant were the partners of one M/s. Infraweld Services. Their partnership deed was registered on 29/06/2017. They ran the business nicely for two and half years. The sharing of the profits was 40% to 60% to the first informant and the accused.

However, in the first week of November, 2019, the Applicant demanded 90% share, whereas the Complainant should take 10% share. It was refused by the first informant.

3. The Applicant from the official e-mail of the Company on 13/11/2019 informed to the customers that the first informant is no more partner. Not only that but the Applicant withdrew an amount of Rs. 16,00,000/- to his personal account from the total amount of Rs. 76,90,592.90/- standing in the name of the Company account. He also changed the password. The first informant issued a legal notice in the month of March 2020 but it was not replied.

4. Accordingly, the complaint is lodged to Kasarvadavli Police Station on 10/08/2020. The Applicant was called for an inquiry as per two letters dated 01/12/2020 and 13/01/2022. He has conveyed to the Police what the stand is as per reply dated 18/06/2022, at page no. 107.

5. The contention is raised that no property is stolen under Section 379 mentioned in letter, on page no. 104. But learned APP submitted that in his complaint he has mentioned about Section 379, but when Police registered the F.I.R. that Section is not invoked. Finally, the Police registered an offence as mentioned above.

6. Learned Advocate for the Applicant relied upon deed of the retirement. It is dated 05/11/2019. The first informant is shown as retired and son of the Applicant is arrayed as Partner. This retirement deed is disputed by the first informant.

7. Learned APP submitted that the stamp papers was issued on 06/11/2019. Endorsement is there on page no. 39, then how can the deed be executed on 05/11/2019.

8. My attention is invited to clause no. 27 which deals with reference of the dispute to single Arbitrator. It does not prevent one of the party to set the criminal law in motion if that is violation of the criminal law.

9. Learned APP invited my attention to the following statements:-

a) Pratima Tiwari dated 04/07/2022, she signed as witness to this deed. She is an employee of the Company. The first informant has never signed on the deed in her presence.

b) Dhurandhar Singh, Chartered Accountant of the Company, has drafted the deed but at the time of the execution the first informant was not present.

10. Learned Advocate for the Applicant submitted that these witnesses have no where said that the signatures do not belong to the first informant. Even though it may be true it can certainly be said that the first informant has not signed on the deed in their presence.

11. Learned APP also invited my attention to the statement of the particulars required to furnish to the income tax authorities, wherein the first informant is shown as retiring partner from 31/10/2019. It certainly indicates the intention of the Applicant that the first informant no more continued as partner of the firm.

12. Much is said that the dispute is civil dispute and it is also submitted that in fact the amount of Rs. 60,00,000/- transferred to his personal account is amount deposited in the account of the Company.

13. Be that as it may initially it was withdrawn from the account of the partnership firm. Learned Advocate relied upon the following judgments:-

(a) Ravindra Saxena Vs. State of Rajasthan[1]

(b) Bimla Tiwari Vs. State of Bihar and Ors.[2]

(c) Balaji A.S. Vs. State of Kerala[3]

(d) The State of Maharashtra Vs. Naresh Rajeshwarrao and Ors.[4]

14. It is true that in case of ***Naresh (supra)***, one of the ground was for obtaining specimen handwriting and signatures of the accused, anticipatory bail should not be refused just because the prosecution claims that they want police custody. These are the observations.

15. Whereas in case of ***Balaji A. S.(supra)*** just because an offence under Sections 418 and 420 of the Indian Penal Code is registered does not mean that custodial interrogation is required. Even attendance condition can be granted.

16. Whereas in case of ***Bimla Tiwari (supra)*** there was process issued under Sections 82 and 83 under the Criminal Procedure Code. Criminal law was set in motion for the purpose of recovery of the money. It should not be allowed by the Court particularly when accused has paid sum of Rs. 6,00,000/- to the

1 Decided by SCC on 15.12.2009
2 Decided by SCC on 16.01.2023
3 Decided by Kerala at Ernakulam on 27.12.2019
4 Decided by Aurangabad Bench on 25.03.2015

Petitioner/first informant.

17. Lastly, in case of ***Ravindra Saxena (supra)***, it is observed that the allegation about cheating or forgery of a valuable security can be assessed at the time of the trial if the dispute is purely of civil nature it cannot be overlooked.

18. After hearing both the sides and going through the documents what I gathered is that the intention of the cheating is manifested. Just because the first informant has refused to change the profit sharing the Applicant sent an e-mail to customers that the first informant is no more partner in the firm. Copy of such email is also shown to me dated 13/11/2019. It mentions that :- "Mr. Vijay Lanjewar is no more with our Company, therefore we are not responsible for any deed created by him.".

19. If at all the Applicant is desirous of discontinuing the partnership business with the first informant, he ought to have followed the legal steps. Though there is a deed of the retirement, it is disputed by the first informant. The statement as mentioned above creates suspicion over its execution by the first informant. Dishonest intention is manifested particularly when the Applicant has withdrawn initially an amount of Rs. 16,00,000/- from the Company

account and then again deposited it. So *prima-facie* allegations are there.

20. His custodial interrogation is required. Hence the application is rejected.

21. These are my prima-facie observations.

[S. M. MODAK, J.]