IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1127 OF 2022

Saurabh Shrenik Surana ….. Applicant

V/s.

1.State of Maharashtra & Anr. ….. Respondents

Mr. Pritesh Bansod for the Applicant.
Mr. S. S. Hulke, APP, for the Respondent-State.

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

DATE : 4th SEPTEMBER, 2023.

P.C.:-

1) By this Criminal Application preferred under Section 482 of Cr.P.C., Applicant seeks quashing of FIR registered *vide* Crime No.624/2022 with Vakola Police Station, Mumbai for the offences punishable under Sections 406 and 420 of IPC.

2) Heard Mr. Bansod, learned counsel for Applicant and perused the papers.

3) Mr. Bansod, learned Counsel for Applicant submits that, FIR alleges that as against the supply of goods for the period from 2017 to 2021 an amount of Rs.61,47,507/- is due and payable and only a sum of Rs.1 Lakh has been paid. He invited attention of this Court to the

statement annexed at page No.29 of the Application detailing the amounts transferred to the account of Respondent No.2-Original complainant and would contend that as against the goods supplied dues have been cleared. He would further contend that in respect of other goods there was a dispute and as such amount is not payable and Respondent No.2 has shown false liability.

4) Perusal of FIR indicates that Applicant had entered into business transaction with Respondent No.2-complainant since November 2015. It is alleged that initially against the goods delivered amounts were paid by the Applicant in time and thus the Applicant gained confidence of Respondent No.2. It is further alleged that, for the period from 2015 to February 2017, Applicant has cleared all liability towards the goods delivered by Respondent No.2. However, after February 2017, no payments were made in respect of the goods delivered. It is alleged that invoices were raised from 23/5/2017 to 24/2/2021 and as such an amount of Rs.61,47,507/- is due and payable as against which only a sum of Rs. 1 Lakh has been paid and balance amount has not been paid and neither goods have been returned.

5) Crime has been registered for alleged offences under Sections 406 and 420 of IPC and powers of this Court under Section 482 of Cr.P.C. has been invoked.

5.1) The Hon’ble Supreme Court in the case of *Central Bureau of*

Investigation vs. Aryan Singh, dated 10th April 2023 passed in Criminal Appeal No.1025-1026 of 2023 (@ SLP (CRL.) Nos.12794-12795 of 2022) has held that, the High Court cannot conduct a mini trial for appreciation of evidence on record, while dealing with an application under Section 482 of Cr.P.C., as it is a mini trial and consider the applications as if those are against the judgment and Orders of the Trial Court on conclusion of trial. 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.

5.2) In the recent decision of the Hon'ble Apex Court in the case of *Manik B Vs. Kadapala Sreyes Reddy & Anr. SLP (Crl) No.2924 of 2023* it is observed that while exercising jurisdiction under Section 482 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. The Hon'ble Apex Court held that, the scope of interference, while quashing the proceedings under Section 482 of Cr.P.C. is very limited. The Court would exercise its power to quash the proceedings only if it finds that taking the case at its face value, no case is made out at all.

6) Guided by the principles laid down by the Hon'ble Apex Court as aforestated, we have perused the FIR. The allegations in the FIR are that initially Applicant had made payment of the goods which were delivered promptly and had thus gained confidence of Respondent No.2.

Prima facie, it appears that since inception there was dishonest intention to cheat Respondent No.2 which is revealed from the allegation of prompt payment for the period from 2015-2017. It appears that subsequently after the delivery of goods, neither the amount was paid nor the goods were returned. Perusal of the allegations in the FIR *prima facie* satisfy the ingredients of sections 406 and 420 of IPC.

7) Learned counsel for Applicant, by pointing out the amounts paid as against the goods delivered, urges this Court to appreciate his defence in an Application under Section 482 of Cr.P.C., which is clearly impermissible under the law. In our opinion, the allegations in the FIR taken as it is, satisfy the ingredients of Section 406 and 420 of IPC and makes out a *prima facie* case against Applicant.

8) In view of the above, we do not find any reason to entertain the application in exercise of powers under Section 482 of Cr.P.C. Resultantly, Application stands dismissed.

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