IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1284 OF 2023

Surendrakumar Bhagat
@ Surendra Kumar Bhagat
53 years old; Occu: Business
R/at Near, Sonali Chowk, Gulabbag
Hansdah, Purnia, Bihar – 654 326. .. Applicant

vs.

1. The State of Maharashtra,
(At the instance of Chandwad
Police Station, Nashik.

2. Paras Zaverilal Dungarwal
About 43 years Old; Occu: Business
R/at. 28, Bhagyalaxmi, Ghodkenagar,
Tal.- Chandwad, Nashik – 423 101. .. Respondents

Mr. Ganesh Gole, i/b. Viraj Shelatkar, for the Applicant.
Ms. Mahalakshmi Ganpathy, APP, for the Respondent-State.

CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.

DATE : 1st NOVEMBER, 2023.

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) By this Application, under Section 482 of the Code of Criminal Procedure, 1973, the Applicant invokes the inherent powers of this Court and seeks quashing and setting aside of F.I.R. bearing No.221 of 2020, registered at Chandwad Police Station, Nashik (Rural) on 8th December, 2020 under Sections 120-B, 34, 409, 420, 504, 506 of the I.P.C.

2) **Facts giving rise to this Application are as under:**

The F.I.R. No.221 of 2020 has been lodged by Respondent No.2-Complainant, who is engaged in the business of trading onions through his company namely M/s. Paras Trading Company at APMC Complex, Chandwad, Nashik. It is alleged that the Applicant has two companies in the name of M/s. Surendra Kumar Bhagat (H.U.F) and Shri Laxmi Traders, Firm at Purnia, Bihar. The Applicant is one of the partners of M/s. Surendra Kumar Bhagat (H.U.F.). It is alleged that, since the year 2016, the Applicant was trading in the commodity of onions with Respondent No.2. That, based on the demands of the Applicant, Respondent No.2 used to purchase the onions from the APMC and supply the same to Applicant through railway/trucks. In turn, the Applicant was paying for the goods supplied through banking transactions. It is alleged that, thus the Applicant through mutual business gained the trust of Respondent No.2. That, between December 2018 to January, 2019, during the normal course of business, Respondent No.2 supplied total 9604 Quintile and 15 Kg of onions worth of Rs.69,54,943/- to M/s. Surendra Kumar Bhagat (H.U.F.). But out of the said amount, the Applicant has paid to Respondent No.2 Rs.28,99,994/- only through banking transaction. Hence, Respondent No.2 contacted the Applicant and other accused persons telephonically and demanded the balance amount of Rs.40,54,949/-, but they avoided to pay the same.

Therefore, Respondent No.2 got compelled to borrow money and pay it to the onion producers-agriculturists. Thereafter, again Respondent No.2 contacted the Applicant and the co-accused telephonically and demanded the balance amount, but it was in vain. Then Respondent No.2 contacted the other onion businessmen at Chandwad and Pimpalgaon. They revealed that their amount is also due from the Applicant but he is avoiding to pay them. Hence, all the businessmen went to Bihar, met the Applicant and co-accused and demanded their money, but the Applicant and co-accused refused to pay the money. Thereafter, many a times Respondent No.2 phoned the Applicant and demanded the balance amount. So, the Applicant paid him Rs.50,000/- only. However, the Applicant and the co-accused denied to pay the balance amount of Rs.40,54,949/-. Thus, the Applicant and others cheated to Respondent No.2. Hence, Respondent No.2 lodged the said F.I.R. which was registered against the Applicant and the co-accused persons for the offences punishable under Sections 120-B, 409, 420, 504, 506 read with 34 of the Indian Penal Code, 1860. But according to the Applicant, he is innocent, yet, he has been implicated in the said F.I.R. Hence, this Application.

3) Peruse the Application and the documents enclosed.

4) Heard Mr. Gole, the learned Counsel for the Applicant and Ms. Mahalakshmi Ganpathy, the learned APP for Respondent No.1-the State.

5) Learned Counsel for the Applicant submitted that in January 2018, the I.T. Department froze the bank account of Shri Laxmi Traders, therefore, in 2018-19, the Applicant did his business with Respondent No.2 through M/s. Surendra Kumar Bhagat (H.U.F.). It is submitted that, the Applicant has already paid the entire price of the supplied onions including the transport/labour etc., charges in respect of the said business. The last payment of Rs.50,000/- was made three days after lodging of the F.I.R. The total amount paid was Rs.44,50,000/-. This all can be easily seen from the ledger account maintained by M/s. Surendra Kumar Bhagat (H.U.F.). in the name of the trading company of Respondent No.2 and the bank account statement of the Applicant's firm. It is submitted that due to COVID-19, from March, 2020 till August 2020, the Applicant was unable to make payment to Respondent No.2 qua the subject matter of the business in the FY 2019-20.

6) The Learned Counsel for the Applicant vehemently submitted that the F.I.R. does not disclose any offence. In fact, the present dispute is purely of civil nature. The Apex Court has time and again cautioned about converting purely civil disputes into criminal cases. In other words, it is trite law that the criminal law should not be set into motion for civil transactions/disputes between the parties. The F.I.R., however, has been filed with an ulterior motive to pressurize and harass the Applicant.

7) The learned Counsel submitted that, the family members of the Applicant are having their independent business. Some of them are students. So, they were not concerned with the business of the Applicant. However, the said family members have been named in the F.I.R. just to compel the Applicant to settle this dispute. It is submitted that after registration of the subject F.I.R., the co-accused filed Criminal Application No.359 of 2023 under Section 482 of the Cr.P.C., wherein this Court recorded that, there is no evidence against the said co-accused, hence the prosecution decided not to file the charge-sheet against the said co-accused. In the backdrop, he submitted that, present F.I.R. is liable to be quashed and set aside.

8) In contrast, the learned APP submitted that, there is ample material against the Applicant that, from time to time, Applicant purchased the onions from Respondent No.2. The total cost of the onions supplied was Rs.69,54,943/-. However, the Applicant paid to Respondent No.2 Rs.28,99,994/- only and intentionally avoided to pay the balance amount. Considering the facts of the case, since inception the Applicant did not want to pay the subject balance amount. Thus, the Applicant cheated to Respondent No.2. As such there is no substance in the Application and it is liable to be rejected.

9) Looking at the rival submissions, we have carefully scrutinized the F.I.R. On such scrutiny, we found that within very short time i.e.,

between 7.12.2018 to 29.01.2019, Respondent No.2 supplied to the Applicant total 9,604 Quintiles and 15 Kgs. of onions worth of Rs.69,54,943/-. Out of it, the Applicant paid Rs.28,99,994/- only. Despite Respondent No.2 demanded the balance amount of Rs.40,54,949/- on various occasions, the Applicant did not pay the same. On the contrary the Applicant continuously avoided to pay the balance amount. Therefore, Respondent No.2 was compelled to lodge the present crime. There was no COVID-19 pandemic situation in the year 2019. Yet, the Applicant failed to explain as to what he did of the huge quantity of the onions. It prima facie appears to us that, the Applicant did not have any intention to pay the balance amount to Respondent No.2. This the Applicant did after gaining trust and confidence of Respondent No.2. Thus, from the text of the F.I.R., we are satisfied that there is a strong prima-facie case against the Applicant of having committed the offences alleged in the F.I.R.

10) It is important to note that after registration of the said F.I.R., the Applicant applied for Anticipatory Bail vide Cri. Misc. (Bail) Appln. No.73/2021 wherein the Applicant has been granted the bail. But while granting the bail, the learned Sessions Judge noted that, as per the Applicant, the contention of Respondent No.2 is true that there was business of purchase of onions in between Respondent No.2 and the firm of the Applicant. The Applicant also admitted that certain amount is outstanding

and he is ready to pay the remaining amount to Respondent No.2. In his written statement before the Investigating Officer, the Applicant has stated that he is ready to pay the remaining amount, which he was unable to pay due to COVID-19 pandemic. Nevertheless, the Applicant did not disclose exactly what amount was remained to be paid by him to Respondent No.2, however he has admitted it before the Sessions Court by making a solemn statement. Even after securing the pre-arrest bail, the Applicant did not pay the remaining amount to Respondent No.2. Thus, this conduct of the Applicant has fortified our conclusion noted above that, there is a prima-facie case of the offences stated in the F.I.R.

11) The learned Counsel for the Applicant has submitted before us that, the Applicant has paid total Rs.44,50,000/- to Respondent No.2 towards the onions purchased. This fact is evident from the ledger accounts and the bank account statement of the Applicant, thus, it is apparent that the claim in the F.I.R. is not true. However, the Applicant is ready to pay Rs.12,50,000/- to Respondent No.2 towards the alleged balance amount. But these submissions cannot be accepted. Because in our jurisdiction under Section 482, it is not permissible and possible to enquire and adjudicate as to how much amount is due and payable by one party to another. Similarly, consideration of the documents of the Applicant at this stage would amount to adjudicating his defence, which is possible only during the trial of the

offence. So, adopting such a course would be a mini trial which is not permissible in law.

The learned APP on instructions submitted that, the charge-sheet is ready to be filed and there is more than sufficient material available on record to corroborate the allegations in the F.I.R.

12) As held by the Hon'ble Supreme Court in the case of *Manik B vs. Kadapala Sreyes Reddy & Anr., [reported in 2023 LiveLaw (SC) 642],* the Court would exercise its power to quash the proceedings only if it finds that taking the case on its face value, no case is made out at all. At the stage of deciding an application 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 charge-sheet. In the case of *CBI vs. Aryan Singh etc [reported in AIR 2023 SC 1987]*, it is held that, "As per the cardinal principle of law, at the stage of discharge/quashing criminal proceedings, while exercising the powers under Section 482 of the Cr.P.C., the High Court is not required to conduct the mini trial. At the stage of discharge and/or while exercising the power under Section 482 of Cr.P.C., the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not"… "Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage".

13) In view of the above discussions, we do not find any substance in the Application and force in the submissions canvassed across the bar on behalf of the Applicant. In the result the Application is liable to be dismissed.

Criminal Application is accordingly dismissed.

(SHYAM C. CHANDAK, J.) **(A. S. GADKARI, J.)**