IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 394 OF 2021

Dr. Ashish Ashok Jain,
Aged about 36 years, Occu.- Doctor,
R/o. Plot No.01, Gadgenagar, C-Block,
Ramnamaroti Sq. Nagpur. **.... APPLICANT**

// **VERSUS //**

1) State of Maharashtra,
Through Police Station
Sitabuldi, District-Nagpur.

2) Sushil S/o Ramesh Kohle,
Aged about 29 years, Occ. - Business,
R/o. Plot No.108, Neemdevi Nagar,
Vanjara Manjri, Helgaon Road,
Kmaptee Road, Nagpur. **.... RESPONDENTS**

Mr. Virat Mishra, Advocate for applicant.
Mr. S.M. Ghodeswar, Additional Public Prosecutor for respondent No.1/State.

CORAM : NITIN W. SAMBRE AND VALMIKI SA MENEZES, JJ.

DATED : 27.09.2023

ORAL JUDGMENT : (Per Nitin W. Sambre, J.)

1. Heard Mr. Virat Mishra, learned counsel for the applicant and Mr. S.M. Ghodeswar, learned Additional Public Prosecutor for respondent No.1/State.

2. The prayer is for quashing of the First Information Report (FIR) in Crime No.297/2020 and the charge-sheet for an offence punishable under Sections 420, 465, 467, 468, 471, 306, 511, 120(B) read with Section 34 of the Indian Penal Code (IPC).

3. Mr. Mishra, learned counsel for the applicant would urge that genesis of the offence is based on threats issued to the respondent No.2-complainant to return the amount, invested by the applicant and the act of the applicant of pressurizing the respondent No.2 to pay back the said amount. It is claimed in the FIR that the applicant was acting in connivance with the other co-accused.

4. In this background, Mr. Mishra, learned counsel for the applicant would urge that ingredients of the offfence punishable under Section 306 of the Indian Penal Code (IPC) i.e. abetment to suicide cannot be inferred against the applicant, as it is an admitted fact on record that none of the parties including the complainant has committed suicide.

5. Apart from above, he would urge that in absence of element of cheating and forgery by the present applicant, the applicant cannot be proceeded against for the offence alleged.

6. Learned APP, Mr. Ghodeswar, submits that the applicant was one of the investors who has invested around Rs.15,00,000/- with the company, managed and run by the respondent No.2. The respondent No.2, while managing the business has taken certain

incorrect decisions in relation to the investment of the company funds, which has led to the company suffering huge losses. As a sequel of above, the respondent no.2 has deposited partial amount in the account of the applicant and also claim to have transferred interest in the immovable property (plot of land). According to Mr. Ghodeswar, the complainant has specifically mentioned in the FIR that the applicant along with the co-accused with common intention misdirected/misguided the applicant, and got the investment made in a property having defective title. As such, the involvement of the applicant can be inferred in the offence alleged.

7. We have appreciated the aforesaid submissions.

8. The prosecution's case itself is based on the complaint dated 07.07.2020 submitted by the respondent No.2. Respondent No.2 has specifically stated that the applicant has invested an amount of Rs.15,00,000/- in his company, having business of advertisement. It is claimed by him that he has invested substantial amount of the company into the immovable property as has been asked by the co-accused and subsequently it was discovered that the title documents provided by the co-accused were not genuine, as such complainant is cheated based on forged title deed, resulting into registration of the offence.

9. The applicant, in the FIR is referred to as one of the investor. It is stated that when the applicant demanded refund of the

amount, the property (plot) to the extent of 2200 sq.ft. was transferred in his name, in addition to deposit of amount of Rs.3,50,000/- as against his investment of Rs.15,00,000/-. The only reference against the applicant in the FIR is, the applicant was acting with common intention with co-accused Gautam Singh for refund of the amount. It is also stated that the applicant has tried to implicate the respondent-complainant in the false offence.

10. If we appreciate the aforesaid material available, admittedly the fact remains that the status of the applicant is that of investor, which can be borne out from the record in view of statement made by the complainant in the FIR.

11. In absence of specific allegation or attribution against the applicant that he has, any time before lodging of the FIR, directed the complainant to invest the amount in the immovable property which has caused loss to him, it cannot be said that offence of forgery for cheating can be inferred against the applicant. Only allegation against the applicant is that he was asking for refund of his deposit with the accrued profit thereon. Said act of the applicant by no stretch of imagination, can be said to draw inference that the applicant was involved in an offence of cheating as has been defined under Section 415 of the IPC.

12. As far as offence of forgery as has been alleged is concerned, there is no iota of material or evidence on the record to

infer or notice that the applicant was involved in forging any of the title-deeds along with the co-accused. To infer that the applicant deceived complainant by making him invest the amount in property having faulty title, neither any material nor specific case of complainant could be noticed to that effect on record.

13. After, perusal of the material available on the record, the necessary ingredients of the offence punishable under Sections 420 i.e. cheating, 465, 467, 471, 468 i.e. forgery, cannot be said to be satisfied. The offence punishable under Section 34 of the IPC cannot be said to be an independent offence. Once the common intention of the applicant cannot be inferred from the available material on record, it cannot be said that the applicant along with the other co-accused is involved in the offence as has been alleged against him.

14. As far as offence of cheating punishable under Section 420 of IPC is concerned, the case of prosecution against the applicant is that of demand of refund of amount of investment. The complainant himself is claiming that the applicant has invested an amount of Rs.15,00,000/-. The complainant has further claimed an amount of Rs.3,50,000/- was deposited in the account of applicant and title in relation to a plot of land to the extent of 2200 sq.ft. was created in favour of the applicant. The applicant alleged to have asked the complainant to take back the plot and refund the invested amount with accrued interest. From the aforesaid prosecution case, it can be

inferred that complainant was not in a position to refund the amount invested by the applicant. The applicant has admittedly invested the amount in the firm of the complainant which can be inferred from the contents of FIR. Without appreciating or analyzing the contents of FIR and other material, it has to be inferred that it is complainant is not in a position to refund the amount because of loss suffered by him/his Company in view of wrong decision of investment. The conduct of the applicant if appreciated in the light of provisions of Section 415 of the IPC, ingredients of the offence of cheating cannot be inferred as the applicant had at no point of time deceived the complainant so as to fraudulently or dishonestly induced him to deliver any property. Rather it is the case of complainant that the applicant has offered to return his plot so as to get refund of the amount deposited or invested. In this background, it cannot be said that there was any fraudulent or dishonest inducement on the part of the applicant so as to deceive the complainant to deliver any property. Even if, the property is delivered by the complainant same was out of his own freewill and so as to satisfy the admitted debt.

15. As regards the offence punishable under Section 465 is concerned, i.e. punishment for forgery, forgery of public record, valuable security and forgery for cheating is concerned, there are no allegation as against the applicant to that effect. Neither the applicant has forged any document nor he has used any forged document or

electronic record to be genuine one. As such, the offence of forgery alleged against the applicant cannot be made out.

16. In this background, the powers under Section 482 can be exercised so as to quash the criminal prosecution against the applicant, particularly when the offence cannot be said to have been made out against him. We have already observed that the ingredients of the offence Section 306 of the IPC are also not satisfied.

17. Having regard to the law laid down by the Apex Court in the matter of ***Indian Oil Corporation Vs. NEPC (India) Ltd.,*** *reported in* ***(2006) 6 SCC 736*** and the ***State of Hariyana & Ors Vs. Ch. Bhajanlal & Ors,*** reported in ***AIR 1991 (SC) 604,*** the case for quashing in exercise of power under Section 482 is made out. As such, the application stands allowed in terms prayer clause (A) only to the extent of the applicant.

(VALMIKI SA MENEZES, J.) **(NITIN W. SAMBRE, J.)**

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