**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 81 OF 2020

1. Nitesh Vijaykumar Khawani
2. Viren Nitin Barne
3. Nehal Asit Mehta
4. Minaj Mushtaqbhai Patel ..APPLICANTS

VERSUS

1. State of Maharashtra
2. Sonal Vilas Patil ..RESPONDENTS

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Mrs. R.S. Kulkarni, Advocate for applicants
Ms. K.R. Jamdhade, A.P.P. for respondent no.1 – State
Mr. T.K. Sant, Advocate for respondent no.2 - informant

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CORAM : R.G. AVACHAT AND SANJAY A. DESHMUKH, JJ
RESERVED ON : 22nd DECEMBER, 2023
PRONOUNCED ON : 03rd JANUARY, 2024

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. This application, under Section 482 of Code of Criminal Procedure, has been filed for quashment of the First Information Report ('F.I.R.'), bearing Crime No. 130 of 2019 registered with Ramanand Police Station, Dist. Jalgaon for the offences punishable under Sections 420, 384, 354-A, 354-D, 467, 468, 471, 504 and 506 read with Section 34 of the Indian Penal Code and under Sections 66(D) and 67 of the Information Technology Act, 2000 and consequential charge-sheet bearing R.C.C. Noo. 501 of 2021 pending on the file of J.M.F.C., Jalgaon.

2. Application of Applicant Nos. 3 and 4 already stands disposed of vide order dated 14th December, 2023. Hence, parties before this Court are Applicant Nos.1 and 2 only i.e. Accused Nos.1 and 3.

3. The F.I.R. reads as follows :-

Respondent No.1 – informant was a third year engineering student. She was in search for a job. She came across an online job website/ portal, https://www.clickindia.com. She registered herself thereon. On 02nd August, 2018 she received a call on her cell phone. The caller was one Nidhi Patel. She offered the informant home based part time job of typing. She informed the informant that she will be supplied with banking, pension and loan forms of foreign based persons. She will have to complete the data feeding of 2500 such forms. A sum of Rs.25/- per form was offered as remuneration. As such, total amount of 2500 forms comes to Rs.62,500/-. She was further supplied with password, e-mail id and website links.

4. The informant completed the job work and submitted the file on the e-mail address given to her. To her utter surprise, she received a legal notice from an Advocate informing that the work done by her was not satisfactory. The notice was issued on behalf of Applicant No.1 – Nitesh Khawani. There were number of mistakes in the work done by her. She received number of cell phone calls from various cell phone numbers. Callers

asked her to pay the compensation else face civil and criminal cases. Having been afraid of being prosecuted, the informant transferred various amount in different bank accounts. Thus she paid total amount of Rs.3,46,700/- during the period 30th August, 2017 to 08th April, 2018. The notices regarding demand of money still continued. The informant was run out of funds. She informed them accordingly. Callers thereafter started abusing her. The informant realised to have been duped and therefore, lodged the F.I.R. On investigation of the crime, charge-sheet came to be filed.

5. Heard. Learned counsel representing the applicants would submit that it is a civil dispute. The informant entered into various agreements with the companies of which the applicants were the Directors. The terms of agreements indicate that any dispute arising between the parties was subject to the jurisdiction of the Court at Surat. Even there was an arbitration clause. As per the terms of agreements, the informant was supposed to complete the work within a time frame and that too without mistake. It was realised that the job performed by her was not satisfactory. There were very many mistakes therein. As per the terms of agreements, she was required to pay the company nominal amount of Rs.10,164/- and Rs.2,000/-. The same was received by Applicant Nos. 1 and 2 respectively. The informant started abusing the applicants and their family members. She created a Whats App group and started defaming them by forwarding various untoward and

lascivious messages. She even indulged in threatening the applicants and made a demand of Rs.1.5 crores. It was nothing but an extortion bid. Applicant No.1, therefore, lodged the F.I.R. against the informant with a police station at Surat. The charge-sheet has been filed in connection therewith.

6. Learned counsel would further submit that the informant was paid back the amount of Rs.10,164/- which was paid by her to the applicants herein. She accepted the same towards full and final settlement. She even sent the applicants SMS to that effect. As such, the matter was settled between the parties. Our attention has been drawn to various documents and text messages besides certain clauses in the agreements executed between the informant on one hand and the companies represented by the applicants and others on the other. The sum and substance of the submissions of learned counsel for the applicants is that the matter is of civil nature. Any dispute between the parties was subject to the jurisdiction of the Court at Surat. Whatever amount had been paid to the applicants has already been paid back to the informant. She acknowledged the same towards full and final settlement between the parties. The applicants had never sent any obscene messages to the informant. It was she, who abused the applicants and defamed them on various platforms. She even made a demand of Rs.1.5 crores. Various text messages in that regard were adverted to. Learned

counsel relied on the judgment of Apex Court in case of ***Mohammad Wajid and Another Vs. State of Uttar Pradesh and Others 2023 LiveLaw (SC) 624*** to ultimately urge for allowing the application.

7. Learned A.P.P. and learned counsel representing Respondent No.2 – informant would, on the other hand, submit that number of such crimes have been registered against the applicants. A newspaper clipping has been placed before us. The informant filed her affidavit-in-reply stating therein the way she was duped and how the applicants are fraudsters. According to them, the terms of agreements themselves indicate the *modus operandi* of the applicants to dupe various educated unemployed youth. According to them, there is strong material to proceed against the applicants. Dismissal of the application was ultimately prayed for.

8. Considered the submissions advanced. Perused the F.I.R. and documents relied on.

9. The informant and applicants had no occasion to meet personally. The informant was an engineering student. She was in search for a job. She came across a job portal/website. She clicked thereon and got registered. She received a phone call from one Nidhi Patel with an offer of work/job. Applicant No.1 is the Director of Stallion Intellectual Pvt. Ltd., a Surat based

company. He claims to be in the business of training and consultation of business outsourcing services. Applicant No.2 claims to be a proprietor of Spectrum Technocrats (Surat based). According to them, the informant subscribed project of form filling work with M/s Aclema Etnerprise, Keydus Technology and M/s Lectrema and Excel Network. These enterprises are associated with Applicant No.1. Memorandum of understanding cum agreement came to be entered into between the informant on one hand and the companies of the applicants on the other. The informant consciously signed all the documents and became a part of those agreements. The terms thereof indicate that any dispute between the parties shall be subject to the jurisdiction of the Court at Surat. An arbitration clause is also therein. The terms would further indicate that the informant was supposed to submit the project work within a time frame. If her job/work was found satisfactorily been performed then and then only she would be entitled for agreed remuneration. There is also a clause providing for a penalty in case of mistakes in the job work. In our view, these terms of agreements are one sided. The informant, after having submitted the job work online, was informed that her work was not satisfactory. She will have, therefore, to pay a small amount towards penalty. She received number of legal notices through Advocates calling upon her to pay various amount, else face civil and criminal cases to be filed at Surat. The informant claimed to have come under stress. To avoid such consequences, she deposited different sums in different bank accounts through Paytm – a Unified Payments Interface. All the record of payment of money has been placed on record. Same indicates she has paid not less than Rs.3,45,000/- in all.

10. True, the record indicates that there were exchange of text messages between the informant, applicants and others. The informant appears to have received a certain sum of money, not more than Rs.15,000/- from the applicants towards full and final settlement of the dispute. Still conversation continued between the parties. The text messages placed on record indicate that vulgar and obscene SMSs have been sent to her. She gave same kind of replies. While one of us was hearing the bail application of Applicant No.1, it was informed that similar crime was registered against him at Pune. Respondent No.2 filed an additional affidavit-in-reply and placed on record a newspaper clipping. It was a newspapers having circulation in Gujrat State. It has been stated therein that the present applicants and others have been indulging in fraud or extortion on the pretext of work from home.

11. In our view, there is material to proceed against the applicants. It would only during trial of the case, the informant would have opportunity to explain in what circumstances she agreed to receive certain money towards full and final settlement and why did she make a demand, if any, of a sum of Rs.1.5 crores. We do not find the criminal proceedings initiated at the

instance of the informant to be manifestly frivolous or vexatious. It is also not the case of there being no legal evidence. The facts in case of Mohammad Wajid (supra) were all together different. The F.I.R. therein was lodged after one year of the alleged incident. The F.I.R. was silent to state specific date or time of the alleged offence. The entire case put up by the informant therein appears to be concocted and fabricated. Same is not the case herein. Nothing has been placed on record as to how and what way the job/work performed by the informant was found to be unsatisfactory, requiring her to pay some amount towards penalty. The manner in which the applicants have dealt with the informant suggests it to be nothing short of a fraud and cheating. We are, therefore, not inclined to allow the application.

12. In view of above, criminal application fails and stands dismissed. It is made clear that the above observations are prima facie in nature.

(SANJAY A. DESHMUKH, J.) **(R.G. AVACHAT, J.)**

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