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

CRIMINAL APPLICATION NO. 297 OF 2022

Prashant @ Somnath Prakash Mangurkar.. Applicant

Versus

The State of Maharashtra and another .. Respondents

Shri Joslyn Menzenes, Advocate h/f Shri P. S. Paranjape, Advocate for the Applicant.
Shri S. V. Hange, A.P.P. for the Respondent No. 1.
shri Vivek Punjabi, Advocate h/f Shri P. P. Kothari, Advocate for the Respondent No. 2.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

CLOSED FOR ORDERS ON : 12.02.2024
ORDER PRONOUNCED ON : 12.03.2024

FINAL ORDER (***Per Shailesh P. Brahme, J.***) **:-**

. Heard both the sides finally at the admission stage with their consent.

2. Applicant is seeking quashment of FIR bearing CR No. 137/2018 of Bodhwad Police Station for offence punishable U/Sec. 406, 420, 120-B, 199 of the Indian Penal Code and consequential R.C.C. No. 78 of 2021 pending before the Trial Court at Jalgaon.

3. The respondent No. 2 lodged report on 28.10.2018 against three persons including present applicant alleging cheating and misappropriation of an amount of Rs. 2,75,00,000/-.

Subsequently, one more person was impleaded as accused. Charge sheet was filed on 01.12.2021. Applicant and the other accused are facing prosecution in R.C.C. No. 78 of 2021.

4. It is alleged by the respondent No. 2 that he is the proprietor of dairy business at Bodhwad, Dist. Jalgaon from where he placed an order of milk powder with proprietors of Mauli Foods and Agricultural Process Pvt. Ltd. namely accused No. 1 Amit Shelke and accused No. 2 Anup Kale. Applicant was the proprietor of Sai Ganesh Ent. Company which was distributor of the product. An agreement was executed on 27.02.2017 for selling 100 ton milk powder at the rate of Rs. 180/- per Kg. and further 50 ton at the rate of Rs. 190/- per Kg. between accused No. 1 and 2 on one hand and the informant on the other. As per the agreement informant transferred Rs. 1,80,00,000/- on 02.03.2017 and Rs. 95,00,000/- on 31.03.2017 to the account of the applicant, being agent. Despite parting with Rs. 2,75,00,000/-, informant did not receive the product. His efforts yielded no results.

5. It is further alleged that due to the insistence of the informant, applicant issued a cheque of Rs. 2,00,00,000/- on 21.10.2017 in favour of informant. It was presented on three different occasions, but was dishonoured. Hence complaint was lodged by the informant. Lateron it was transpired that amount of Rs. 1,80,00,000/- was transferred by accused Nos. 1 and 2 to 4th accused Dnyandev Ganpati Salunke.

6. Learned counsel for the applicant submits that he did not enter into any transaction for supply of the goods. He is neither a party to the agreement dated 27.02.2017, nor had any liability in the transaction. The liability of either supplying the goods or refunding the amount was purely of accused Nos. 1 and 2. He would submit that the dispute is of civil nature which is given colour of crime. He was not privy to the contract

7. Learned counsel would submit that when informant transferred Rs. 1,80,00,000/- and thereafter Rs. 95,00,000/- to him, those were immediately remitted to other accused persons. The applicant intervened in the matter by issuing cheque of Rs. 2,00,00,000/- just to help the informant. Learned counsel submits that there is no ill intention on the part of the applicant and he did not gain any benefit from and out of the transaction. He would further submit that no *prima facie* case is made out for the offence U/Sec. 420, 406 and 120-B of the Indian Penal Code.

8. Learned Assistant Government Pleader and the learned counsel for the respondent No. 2 oppose the submissions of the applicant. The respondent No. 2 seeks to rely upon affidavit in reply. They would submit that there is documentary evidence to show parting of amount of Rs. 2,75,00,000/- by informant as per the agreement. Despite the persuasion the product was not supplied to him. They would submit that there are bank statements collected during the course of investigation to show that applicant transferred Rs. 2,70,00,000/- and deducted amount of Rs. 5,00,000/-. There is material on record to show that

amount of Rs. 2,60,00,000/- was transferred by the accused No. 1 to the accused No. 4 thereby retaining an amount of Rs. 10,00,000/-.

9. It is further submitted that, amount of Rs. 1,80,00,000/- was transferred on 02.03.2017 by the accused No. 1 to the accused No. 4. It further reveals from the record that part of the amount was withdrawn by the accused No. 4 for the personal use. The bank record, the statements of the witnesses and supplementary statement would indicate complicity of the applicant. It is further submitted that it is not permissible while exercising jurisdiction U/Sec. 482 of the Cr. P. C. to conduct a mini trial.

10. We have considered rival submissions of the parties. We have gone through the relevant documents. Agreement dated 27.02.2017 was entered into between informant on one hand and accused Nos. 1 and 2 on the other hand. There appears to be execution of a promissory note on 03.04.2017 by accused No. 1 in favour of informant. There is a written contract to supply milk powder to the informant for an amount of Rs. 2,75,00,000/-. It also reveals that informant transferred an amount of Rs. 1,80,00,000/- on 02.03.2017 and thereafter Rs. 95,00,000/- on 31.03.2017 to the account of the applicant. As per the agreement the informant appears to have discharged his liability of making payment. There is absolutely no material on record to suggest that entire quantity of product or part of it was supplied to the informant.

11. Learned counsel for the applicant has referred to the bank statements to show that an amount of Rs. 1,80,00,000/- was immediately transferred by the applicant to the account of Mauli Food and Agricultural Processing Pvt. Ltd. Thereafter, on 02.03.2017 the said amount was transferred to the account of the respondent No. 4. It reveals from the record that the applicant retained an amount of Rs. 5,00,000/- out of the amount which was transferred by the informant. This amount has not been transferred to other accused persons. Similarly, accused Nos. 1 and 2 retained amount of Rs. 10,00,000/-. There is no satisfactory explanation coming forth from the applicant for retaining Rs. 5,00,000/-.

12. It is incomprehensible as to why applicant issued cheque of Rs. 2,00,00,000/- to the informant on 21.10.2017. It was dishonoured on three different occasions. If the applicant was not involved in the transaction and he was not to gain any monetary benefit, then he would not have made any endeavour to refund the money by issuing the cheque. It is further matter of record that the applicant is facing prosecution in S.C.C. No. 668 of 2018 U/Sec. 138 of the Negotiable Instruments Act filed by the informant. Under these circumstances we are not inclined to exercise our jurisdiction for quashing the proceedings.

13. The respondent No. 2 has already paid an amount of Rs. 2,75,00,000/- for which he did not receive the goods. Applicant as well as other accused persons appear to have received substantial

amount without there being discharge of their liability under the contract. Inducement of the informant, parting of the payment and unlawful gain are apparent on the record. When the parties entered into contract, their might not be any element of deception. But not supplying goods and still retaining huge amount would certainly attract criminal liability. We, therefore, are of the considered view that this is not a fit case to exercise the jurisdiction to quash the proceedings at this stage.

14. After going through the account statement, we find that the transactions amongst the parties are intricate. It would not be possible for this court to examine all the transactions while exercising jurisdiction U/Sec. 482 of the Cr. P. C. As laid down by the Hon'ble Supreme Court in the matter of **Central Bureau of Investigation Vs. Aryan Singh Etc.** reported in ***AIROnline 2023 SC 252***, High Court cannot conduct mini trial while exercising jurisdiction U/Sec. 482 of the Code. We find substance in the submission of the respondent that intricate factual matrix would require full fledged trial.

15. For the reasons recorded above, criminal application is rejected.

[SHAILESH P. BRAHME, J.] **[MANGESH S. PATIL, J.]**

bsb/March 24