IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1046 OF 2020

1. Sunil S/o Manakchand Kotecha,
Age : 57 years, Occu. : Business,

2. Manakchand S/o Kapurchand Kotecha,
Age : 80 Years, Occu. : Business,

Both R/o Wardhaman Nagar,
Near Royal Palace, Jalgaon,
Tq. & Dist. Jalgaon. .. Petitioners

Versus

1. The State of Maharashtra,
Through the Police Incharge
Ramanand Nagar, Police Station,
Jalgaon.

2. Dilip S/o Vijaykumar Kotecha,
Age : 56 Years, Occu. : Business,
R/o Lake Side Residency,
Mehrun, Tq. & Dist. Jalgaon. .. Respondents

Shri Amol K. Gawali, Advocate for the Petitioners.
Shri G. A. Kulkarni, A.P.P. for the Respondent No. 1.
Shri D. S. Bagul, Advocate for the Respondent No. 2.

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

CLOSED FOR JUDGMENT ON : 19.04.2024
JUDGMENT PRONOUNCED ON : 09.05.2024

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

. Rule. Rule is made returnable forthwith. Heard both the sides finally at the admission stage.

2. Petitioners are seeking quashment of first information report CR No. 247/2020, consequential charge sheet and R.C.C. No. 985 of 2021 pending before the Chief Judicial Magistrate, Jalgaon for the offences punishable U/Sec. 420, 465, 466, 467, 468, 469, 470 and 471 r/w Sec. 34 of the Indian Penal Code. During the pendency of the petition, petitioner No. 2 died, hence petition as against him stands abated.

3. Respondent No. 2 lodged report with Ramanand Nagar Police Station, Jalgaon on 25.06.2020 against the petitioners stating that in the year 2008 petitioners and the informant being directors of Sidharth Construction and Mahaveer Civil Engineering and Services Pvt. Ltd. entered into joint venture. Accordingly agreement of joint venture was executed on 20.03.2009. It was for executing work of installation of sub station at Nandura, Dist. Buldhana, known as Jigaon Project. On 19.04.2019 escrow account and current account were opened with Jalgaon Peoples Co-operative Bank in the name of the joint venture. Informant was delegated all powers of transaction and operation of the bank accounts by authority letter dated 08.04.2019. Accordingly informant was operating the bank accounts. It is alleged that petitioner No. 2 resigned from directorship of Sidharth Infra Tech Pvt. Ltd on 16.07.2018. The resignation was accepted.

4. Despite resignation, both the petitioners acted in collusion

and got prepared a resolution on 19.04.2019 authorizing Mr. Chandrakant Baliram Sonawane to operate bank accounts. A letter dated 06.08.2019 was prepared giving power to Mr. Chandrakant Sonawane. On 15.04.2020 letter was given to Manager of Jalgaon Peoples Co-operative Bank with bogus and forged documents seeking permission to operate the bank accounts through Mr. Chandrakant Sonawane. These forged documents have been used in the proceedings before the Consumer Forum. It is alleged that petitioners deceived informant with forged and bogus documents.

5. Learned counsel for petitioners submits that dispute between the parties is civil in nature which is drapped in a criminal proceeding and, therefore, liable to be quashed. Learned counsel would submit that there is no wrongful loss to the respondent No. 2 or wrongful gain to the petitioners as no transaction has been made through the account of the joint venture. It is further submitted that due to inadvertent errors wrong dates and wrong account numbers were mentioned. The petitioner No. 2 sent certified copy which is alleged to be forged as he was suffering from dementia. Lastly, it is submitted that no offence can be made out and proceedings are liable to be quashed.

6. Learned Assistant Public Prosecutor and the learned counsel for the respondent No. 2 oppose the submissions of the petitioners. The respondent No. 2 seeks to rely upon the affidavit in reply and the documents annexed to it. They would submit that bogus and forged documents are created in order to gain

financial advantage. Both the bank accounts were to be operated by the informant, but record is created to represent bank that Mr. Chandrakant Sonawane was authorized to operate the bank accounts.

7. Learned counsel for the respondent No. 2 would invite our attention to various documents and the proceedings to buttress his submission that in a full fledged trial the allegations could be proved. He would vehemently point out the forged documents and correspondence made with the bank to indicate that there is *prima facie* material to proceed against the petitioners. He would streniously point out that the mistakes as contended by the petitioners are not by inadvertence, but with specific intention to cheat informant and to misappropriate the funds. It is further pointed out that the petitioners have suppressed material facts, which could be disclosed during the course of trial.

8. We have considered rival submissions of the parties. We have also gone through the relevant papers of investigation as well as affidavit in reply and its annexures.

9. Cheating and forgery are the offences alleged against the petitioners. Present case has civil overtures. The parties are already litigating before the District Consumer Forum as well as the Company Tribunal. Their civil dispute pertains to contractual rights. For deciding present matter U/Sec. 482 of the Code of Criminal Procedure, there has to be *prima facie* material to show that petitioners dishonestly induced informant to deliver

any property or induced to consent that any person should retain any property. So far as the allegations of forgery are concerned, it has to be established *prima facie* that false document was executed or prepared with intent to cause damage or injury or to part with property and has been used as a genuine document. For both offences of cheating and forgery, wrongful gain to accused and wrongful loss to informant are basic ingredients.

10. We find that there are only allegations that bogus resolution was passed, bogus authority was given to Mr. Chandrakant Sonawane to operate bank accounts and on the basis of these documents a representation was made to the bank so as to secure permission to operate both accounts. There is no material to indicate that Mr. Chandrakant Sonawane has actually operated bank accounts. There is nothing to show that transactions of joint venture have been done through bank accounts so as to cause wrongful loss to the informant or wrongful gain to the petitioners. Basic ingredients of offence of cheating are absent. Mere representation to the bank or passing illegal resolutions would not amount to wrongful loss or wrongful gain. We are of the considered view that offence U/Sec. 420 of the I. P. Code is not attracted.

11. Petitioner No. 2 had resigned from directorship. Resolution was passed on 19.04.2019 appointing Mr. Chandrakant Sonawane to operate bank account. A representation was made to the bank on the basis of the resolution. We have considered resolution dated 19.02.2019, resolution dated 19.04.2019 and

letter dated 06.08.2019 addressed to the bank. There is nothing on record to show that the signatures are forged. No experts opinion is solicited to examine the signatures. There is no *prima facie* material to make out a case of forgery.

12. It needs to be clarified that petitioners might not have any authority to appoint Mr. Chandrakant Sonawane by replacing informant, to operate the bank accounts, but that would not *ipso facto* lead to commission of offence. The explanation has been tendered by the petitioners that inadvertently mistakes occurred in putting dates on the relevant documents. We do not propose to go into the explanation at this juncture. But these facts would not *prima facie* make petitioners liable for offence of cheating or forgery.

13. There is another facet of the matter. Preparation of the resolutions, authority letter or power of attorney in question could at the most be described as stage of preparation to commit offence alleged. Jurisprudentially, if, we consider four stages of the offences, what is punishable are stages of attempt and commission. Initial two stages of intention and preparation are not punishable. Albeit, preparation to wage war and preparation to commit dacoity are punishable U/Sec. 121 and 399 besides Sec. 511 of the I. P. Code respectively. Therefore, we are of the considered view that no prosecution would lie for preparation to commit offence U/Sec. 420, 465 and 471 of the I. P. Code.

14. For the reasons stated above, it would be an abuse of

process of law to proceed against the petitioner. We, therefore, allow the criminal writ petition in terms of prayer clauses 'A' and 'AA' of para No. 29 of the petition. Rule is made absolute accordingly.

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

bsb/May 24