2024:BHC-AUG:1736-DB

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2965 OF 2021

1. Ashok Motilal Katariya
Age 72 years, Occu. Business

2. Snehal d/o Satish Parakh Alias
Sau. Snehal w/o Manjit Khatri
Age 30 years, Occu. Housewife

3. Satish Dhondulal Parakh,
Age 64 years, Occu. Business

4. Ashish s/o Ashok Katariya,
Age 42 years, Occu. Business

5. Rajendra s/o Chindulal Burad,
Age 52 years, Occu. Business

All R/o Ashoka House,
Ashoka Marg, Wadala, Nashik … **APPLICANTS**

<u>**VERSUS**</u>

1. The State of Maharashtra
through Shanipeth Police Station,
Jalgaon, Tq. & Dist. Jalgaon

2. Ishwarlal s/o Shankarlal Lalwani (Jain),
Age 75 years, Occu. Business,
R/o 169, Balaji Peth, Jalgaon,
Tq. & Dist. Jalgaon

(Copy for respondent No.1 to be
served on Public Prosecutor,
HighCourt, Bench at Aurangabad) … **RESPONDENTS**

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Mr. N.V. Gaware, Advocate holding for
Mr. S.R. Sapkal, Advocate for applicants
Ms. K.R. Jamdhade, A.P.P. for respondent No.1.
Mr. A.A. Yadkikar, Advocate for respondent No.2.

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

Date of reserving judgment : 22nd December, 2023
Date of pronouncing judgment : 15th January, 2024

<u>JUDGMENT (PER R.G. AVACHAT, J.)</u> :

This is an application, under Section 482 of the Code of Criminal Procedure, for quashment of First Information Report (F.I.R.) bearing Crime No.0219/2021, registered at Shanipeth Police Station, Jalgaon, Taluka and District Jalgaon for the offence punishable under Section 420 read with Section 34 of 120-B of the Indian Penal Code and the consequential charge sheet pending on the file of learned Judicial Magistrate, First Class, Jalgaon.

<u>FACTS</u> :-

2. The F.I.R. has been lodged by the respondent No.2 on 27/10/2021. it is his case that he was a jeweler by profession. He has family relations with applicant No.1 Ashok Motilal Katariya. There have been monetary transactions between the two as well. Applicant No.1 is owner of "Ashoka Engineering Company" and "Ashoka Builders & Developers". He had come to the house of the informant and requested for a hand loan in 2011. The informant paid him Rs.11 Crores and Rs.19,24,60,125/- in cash and through Bank as well during 2010 to 2015. Applicant No.1 repaid some of the amount. A sum of Rs.6,99,36,741/- and Rs.17,63,80,210/- was

still outstanding from Ashoka Engineering Company and Ashoka Builders & Developers respectively. The informant time and again requested the applicant No.1 to pay back the amount. He bought time for one or the other reason.

3. It is also the case of the informant that the applicants No.1, 2 and 5 came to his office at Jalgaon on 2/10/2015. They sought for time to pay back the amount due. Two Joint Venture Agreements (JVAs) ready in all respects were brought by them. They assured the informant that these documents are prepared only with a view to get time from him for repayment of the amount. Relying on their representations, the informant signed those agreements without reading the same. The informant thereafter again and again requested the applicant No.1 to pay back his money. He again avoided to pay back under one or the other pretext.

4. It is also the case of the informant that he owed Rs.25 Crores to “Manraj Motors Pvt. Ltd.” He, therefore, requested Ashok to return the amount due. Taking advantage of the said circumstance, he introduced Shri Ashok Bedmutha (Director of Manraj Motors) as a third party. He again brought prepared deeds of assignments dated 3/3/2017. So called rights of the informant under both the JVAs were shown to have been signed in favour of

Manraj Motors. The informant signed these documents relying on the representation made by Ashok that he would pay back the amount due within six months either to him or to Manraj Motors.

5. It was thereafter realised that the lands in respect of which the JVAs and deeds of assignment were executed were non-transferable without the permission of the Collector and/ or were not exclusively owned by the applicant Ashok. In respect of land Gut No.1105, a Civil Suit (No.668/2012) was pending in a Court at Nasik. Lands situated within the limits of District Thane were at remote places. The land Survey No.694, situated at Sinner had already been acquired by the Government for construction of a road. While applicant Ashok had a small interest in the land Gut No.58/2. In respect of the said land also there was a Suit (No.649/2012), subjudice in the Court at Nasik. As such, the applicants herein are alleged to have prepared false and fabricated documents. They made a false representation to the informant only with a view not to pay back the amounts due. Thus, the informant and the proprietor of Manraj Motors have been duped/ cheated.

6. On investigation, charge sheet has been filed. Reference to contents of JVAs and deeds of assignment would be made while appreciating the issue involved.

7. Heard. Learned counsel for the applicants would submit that, the terms and conditions contained in the JVAs and the deeds of assignment would go a long way to infer it to be a civil matter. The amount due to the informant were converted into security deposit. The lands covered by the JVAs were agreed to be developed by the informant within a period of 3 years. Time was essence of the contract. There is arbitration clause as well. When the informant could not perform his part of the JVAs, it is only on his request his rights were assigned in favour of Manraj Motors (JV). The applicants paid Manraj a sum of Rs.1,49,30,000/- for development of the land. A notice was issued to it to comply with the terms of the deed of assignment. After having waited for some days, when compliance was not forthcoming, Manraj Motors was informed about the security deposit to have been forfeited. Our attention has also been adverted to two commercial suits filed by Manraj Motors for cancellation of JVAs and compensation. We were taken through the pleadings in both the suits. According to learned counsel, Manraj Motors had lodged a report with the Superintendent of Police in relation to the very transaction. An enquiry into the same was made. The police officers concluded it to be a civil dispute. Manraj Motors, therefore, approached the Court of learned Judicial Magistrate, First Class with an application under Section 156(3) of the Code of Criminal Procedure. Learned Magistrate refused to direct registration of F.I.R. The informant is a

big-wig. He is a politician as well. Based on the very facts and circumstances, police registered the F.I.R. in question. For getting the F.I.R. registered, the informant exercised his political and financial clout. According to learned counsel, based on same facts and circumstances, no second F.I.R. could be registered.

8. The learned counsel for applicants would further submit that, although the charge sheet has been filed, none of the investigation papers make out ingredients of the offences alleged to have been committed. The learned Additional Sessions Judge granted the applicant anticipatory bail, observing the nature of transaction to be commercial one. The learned counsel relied on the following set of authorities to ultimately urge for allowing the application :

(1) State of Haryana & ors. Vs. Bhajan Lal & ors.
1992 Supp (1) SCC 335

(2) Inder Mohan Goswami & anr. Vs. State of Uttaranchal & ors.
(2007) 12 SCC 1

(3) Chandran Ratnaswami Vs. K.C. Palanisamy & ors. etc. etc.
(2013) 6 SCC 740

(4) M. Suresh & ors. Vs. State of Andhra Pradesh & anr.
(2018) 15 SCC 273

(5) Anand Kumar Mohatta & anr. Vs. State (NCT of Delhi), Department of Home & anr. [(2019) 11 SCC 706]

(6) Haji Iqbal alias Bala through S.P.O.A. Vs. State of U.P. & ors. [2023 SCC OnLine SC 946]

(7) Sarabjit Kaur Vs. State of Punjab & anr.
(2023) 5 SCC 360

(8) Mohammad Wajid & anr. Vs. State of U.P. & ors.
2023 LiveLaw (SC) 624

(9) T.T. Antony Vs. State of Kerala & ors. [(2001) 6 SCC 181]

(10) Upkar Singh Vs. Ved Prakash & ors. [(2004) 13 SCC 292]

9. Learned counsel for respondent No.2 and the learned A.P.P. would, on the other hand, submit that, reading of the F.I.R. would prima facie disclose commission of the alleged offence. Powers of quashing of F.I.R. and consequential charge sheet are to be exercised very sparingly. It is not that based on one and the same transaction two proceedings, one for criminal action and the other civil, do not give cause of action. The learned counsel took us through the investigation papers and the conclusion drawn by the investigating officer for filing of the charge sheet. Only with a view to avoid repetition, we do not propose to advert thereto. Learned counsel have also relied on the following authorities in support of their contention to ultimately urge for rejection of the application.

(1) Arun Bhandari Vs. State of U.P. & ors.
2013(1) Mh.L.J. (Crl) 475

(2) Rajesh Bajaj Vs. State NCT of Delhi & ors.
MANU/SC/0155/1999 (SC)

(3) Medchl Chemicals & Pharma P. Ltd. Vs. Biological E. Ltd. &

ors. [AIR 2000 SC 1869]

(4) Subramanian SwamyVs. Manmohan Singh & ors.
AIR 2012 SC 1185

10. Considered the submissions advanced. Perused the F.I.R. and the related papers. Admittedly, there were family and financial relations between the applicant No.1 and the informant. It is also not in dispute that applicant No.1 had availed hefty hand loan/s from the informant, a jeweler by profession. It is also an undisputed fact that, on the day on which the JVAs were executed, the applicant No.1 Ashok Katariya owed sums of Rs.6,99,36,741/- and Rs.17,63,80,120/- to the informant. It has been specifically averred in the F.I.R. that the informant time and again requested the applicant No.1 to pay back the amount. He, however, bought time under one or the other pretext. There are on record two JVAs executed between applicants No.1, 2 and 5 on one hand and the informant on the other. These are in the nature of development agreements in respect of the agricultural lands described in the schedule appended thereto. Both the JVAs were executed on stamp papers of Rs.100/- only. Those JVAs ought to have been executed on requisite stamp papers and must have been registered as well. It is the specific case of the informant that relying on the representation made by applicants No.1, 2 and 5 he signed those JVAs. According to him, those were never to be acted upon. Some

of the terms contained therein would indicate that the development in the nature of flats to be constructed thereon was to be completed within a period of three years. Everything required for such development was to be done by the informant alone. Admittedly, no document in the nature of power of attorney or any other document was executed by any of the applicants in favour of the informant authorising him on their behalf to do the needful towards the development of the lands. True, the ratio of distribution of profit was fixed. The development was to be completed within a period of 36 months. Time was said to be essence of contract. Failure to develop the lands within the time-frame would entail forfeiture of security deposit. The amounts which the applicant No.1 owed to the informant were converted into security deposit/s. As per the JVA pertaining to sum of Rs.6,99,36,741/- is concerned, the informant was shown to have agreed to pay the applicants No.1, 2 and 5 a sum of Rs.10 Crores. While under the another JVA, he agreed to pay Rs.20 Crores. The same indicates the informant was to pay little over Rs.6 Crores more to these applicants. There is nothing to indicate the applicants to have ever called upon the informant to make up the deficit towards the entire payment of security deposit. The same suggests, the transaction between the parties were other way round. The JVAs appear to have been executed with an intention never to be acted upon.

11. It is also the case of the informant that the applicant Ashok failed to pay back the amount due towards hand loan. The informant owed a sum of Rs.25 Crores to Manraj Motors. Manraj Motors were pressing hard to get back the money. The applicant Ashok realised the same. It was he who introduced the proprietor of Manraj Motors into a tri-party agreement dated 3/3/2017 (deeds of assignment). Under these agreements, all the so called rights of the informant came to be assigned in favour of Manraj Motors. These two documents were also never intended to be acted upon. The applicant No.1/ so called developer and infrastructures had agreed to pay back the loan amount either to informant or Manraj Motors. The same never happened. Close reading of the JVAs and the deeds of assignment would indicate that none of the applicants ever agreed to pay any amount towards development of the land. It is not known as to why still they paid a sum of Rs.1,49,30,000/- to Manraj Motors. The same suggests it to be a repayment towards the amount due as a hand loan or might be an interest thereon. When the period of 36 months was over, one Mr. Mahendra Katariya, representing Ashoka Builders & Developers issued notice to Manraj Motors, calling upon them to perform their part of the JVAs. The notice was replied by the Director of Manraj Motors, disclosing the true nature of transactions. Thereafter, Ashoka Builders issued a notice to Manraj Motors, informing it the amount of security i.e. little over Rs.20 Crores stood forfeited. The

same suggests dishonest intention of parties (applicants) to the JVAs and the deeds of assignments.

12. True, two commercial suits have been filed by Manraj Motors against applicants and others for cancellation of JVAs and the deeds of assignments and for compensation. The pleadings in the suits are consistent with the case averred in the F.I.R. It is the case of the plaintiff Manraj Motors that the applicant Ashok and others got all those documents fraudulently executed.

13. During investigation, following facts came to light. The lands covered by the JVAs were situated at 2 – 3 places. The lands within the limits of Taluka Shahapur were at remote place. The lands were not transferable without the permission of the Collector or higher revenue authorities. The transaction between the so called original owner and Ashok were hit by certain provisions of law (Tenancy Law).

So far as regards land Gut No.58/2, situated at Satpur is concerned, there was a Civil Suit pending in the Court at Nasik (R.C.S. No.649/2012).

Land Gut No.1105, situated at village Adgaon was not standing in the name of applicant No.5 while JVAs were executed.

The said land was also subject matter of another Civil Suit (being R.C.S. No.608/2013).

The land bearing Gut Nos.246, 248, 226 and 345, situated at village Sharanpur were not transferable without the permission. The applicant No.5 did not have transferable title to these lands.

The lands bearing Gut Nos.246 and 248 were in the green zone.

The land Gut No.226 was partly a forest land and, therefore, could not be subject of development.

To top it, the land situated at Sinnar had already been acquired by the Central Government for development of road.

As such, all the lands in relation to which the JVAs for their development were executed, were either subject of litigation, and parties did not have clear title thereto. One of the said lands had already been acquired by the Government for development of road. Others were not transferable without the permission of the revenue authorities. Some of the lands were purchased by applicant Ashok in breach of statutory provisions etc. There is also on record a public notice issued in the Daily Prabhat dated 5/6/2020, suggesting applicant Ashok to have allegedly duped other land-holders, residents of Pune.

14. Each case has to be decided on peculiar facts and circumstances appearing therein. The observations made in the authorities relied on by the learned counsel for the applicants were in the setting of the facts of those respective cases.

15. True, the informant is a big-wig. He is rich and Member of Parliament as well. The facts and circumstances, however, indicate that, the applicant Ashok and parties to all those documents had dishonest intention in getting executed the JVAs. The land which could not have been developed within a span of 36 months were made subject matter of JVAs. The informant appears to have been kept in dark thereof. After a period of three years was over, a notice was issued informing the security deposit amounting of little over Rs.20 Crores to have stood forfeited. Section 415 of the Indian Penal Code defines offence of cheating. Sections 415 and 420 of the Indian Penal Code read thus :

> **415. Cheating:-** Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any

> property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.
>
> *Explanation*:- A dishonest concealment of facts is a deception within the meaning of this section.
>
> **420. Cheating and dishonestly inducting delivery of property:-** Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

16. In our view, the ingredients of Section 415 of the Indian Penal Code do get attracted in the facts and circumstances of the case. These are the observations prima facie in nature.

17. True, Manraj Motors had approached the Superintendent of Police with a similar grievance. The police authorities found it to be a civil dispute. Manraj Motors, therefore, approached the Court of learned Judicial Magistrate, First Class and moved an application under Section 156(3) of the Code of Criminal Procedure. The application was rejected so far as regards the said prayer is concerned. Liberty was, however, granted to

treat the said application as a complaint under Section 200 of the Code of Criminal Procedure. The complainant was called upon to give verification, if he so desired. The learned Magistrate observed that respondent No.2 herein (informant) had not moved such application. True, Manraj Motors did not take the matter further. In the case in hand, the respondent No.2 is a victim. It is he who first time approached the Police with a report. Based on his statement, the F.I.R. came to be registered. It is not the case that a second F.I.R. has been registered based on same set of facts and circumstances. The one which was sought to be registered at the instance of Manraj Motors was not entertained by another Police Station. Much water has flown post registration of the F.I.R. The investigating officer found substance and, therefore, filed the charge sheet. On close scrutiny of the F.I.R. and the police papers, we find the alleged offence to have been prima facie made out. Reliance on the judgment in case of T.T. Antony (supra) and Upkar Singh (supra) would, therefore, be of no assistance to the applicants.

18. The F.I.R. and the consequential charge sheet has not been challenged on any other ground so as to make out a case for relief to some of the applicants. It is reiterated, the challenge is only on the ground of it being a civil dispute and second F.I.R. to have not been maintainable. These grounds we have dealt with,

with the reasons stated hereinabove. For all these reasons, the application is sans merit and, therefore, liable to be rejected. The application is rejected.

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

fmp/-