



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4185 OF 2023

1] Dushyant Singh Mangilal Panwar

2] Dr. Samatha Singh

.. Applicants

Versus

1] The State of Maharashtra,
Through the Police Station Officer,
Muktainagar Police Station,
Dist. Jalgaon

2] Pankaj Ramdas Punase

.. Respondents

...
Advocate for applicants : Mr. N.P. Patil Jamalpurkar
APP for the respondent – State : Mr. Sarang P. Joshi
Advocate for the respondent no. 2 : Mr. Yogesh H. Jadhav
...

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

**RESERVED ON : 19 APRIL 2024
PRONOUNCED ON : 06 MAY 2024**

ORDER (MANGESH S. PATIL, J.) :

Heard.

2. This is an application under section 482 of the Code of Criminal Procedure praying for quashment of the crime from FIR no. 344 of 2023 registered with Muktainagar Police Station, District – Jalgaon on 15-09-2023 for the offences punishable under section 177, 201, 379, 406, 420 read with 34 of the Indian Penal Code and

consequent Regular Criminal Case no. 43 of 2024 pending before the learned Judicial Magistrate, First Class, Muktainagar, District - Jalgaon.

3. At the joint request of the parties, we have heard the matter finally at the stage of admission.

4. The allegations as can be deduced from the chargesheet are to the effect that the respondent no. 2 intended to start R.O. and water bottling plant in the name of his wife. He could trace an Indiamart portal that one Apex Technomac Company owned by the present applicants was dealer of various machines for the RO and bottling plant. He contacted them and they forwarded him a quotation on WhatsApp messenger. The deal was finalized in February 2023. Initially from his wife's account, he transmitted an amount of Rs.51,000/- in the account of the applicants and, thereafter, again paid them in aggregate Rs.4,50,000/- forming 25% of the total cost.

5. It is then alleged that initially the applicants transmitted the plant and machinery and, thereafter, he again paid them different amounts from time to time, in aggregate of Rs.20,51,000/-. According to him, only Rs.20,000/- towards the transportation charges and Rs.29,000/- were withheld by him since work of securing a licence was not complete. The applicants had assured him to install the plant and extended warranty for a year and assured of giving service for one year.

6. It is then alleged that the entire plant and machinery was never supplied and installed and was not made ready for undertaking production in spite of his repeated requests. Finally, three individuals were sent by the applicants by name Shahid, Dinesh and Satish, however, all the three individuals did not complete the installation work to undertake any test. He then contacted the applicants and informed them that in spite of repeated attempts, there was a problem of leakage and the persons sent by them were unable to rectify the error.

7. It is then alleged that out of the three persons sent by the applicant, Shahid developed acquaintance with couple of employees engaged in the nearby petrol pump owned by respondent no. 2 and taking advantage of it, stole cash of Rs. 15,000/- from employee Deepak and all the three fled from the spot. After some pursuit, some people accosted them. They told these persons who had accosted them that they were the employees of respondent no. 2. He was called there. On search, cash of Rs.10,000/- was found in Shahid's bag. When he informed the episode to applicant no. 1, he assured to pay him the remaining amount of Rs.5000/- on the next day and even assured to undertake the work of installation and, therefore, he did not lodge any compliant immediately.

8. Lastly, it is alleged that the applicants have fraudulently and dishonestly made him to pay money by assuring installation of the R.O. and water bottling plant and have cheated him.

9. The FIR also gives the particulars as to in what respects the plant was deficient.

10. Learned advocate for the applicants would vehemently submit that accepting the allegations in the FIR at the face value, it is clearly a civil dispute and a commercial transaction. There is nothing to attribute any dishonest or fraudulent intention on the part of the applicants. At the most, it is a matter of deficient service. It would be open for respondent no. 2 to resort to the appropriate remedies to ventilate his grievance, however, he has been able to manage registration of the crime with an oblique motive as a short cut. It would be abuse of the process of law to make the applicants face the trial. It is not a matter of cheating or misappropriation. The applicants are not concerned with the offence of alleged theft.

11. He would advert our attention to the following decisions :

- i) ***Usha Chakraborty V. State of West Bengal and another; 2023 LiveLaw (SC) 67***
- ii) ***Sachin Garg Vs. State of Uttar Pradesh and another; 2024 SCC OnLine SC 82***
- iii) ***V.Y. Jose and another Vs. State of Gujarat; (2009) 3 SCC 78***
- iv) ***M N G Bharateesh Reddy Vs. Ramesh Ranganathan and another; 2022 SCC OnLine SC 1061***

v) ***Mitesh Kumar J. Sha Vs. The State of Karnataka and others;***
(2022) 14 SCC 572

12. Per Contra, the learned APP and the learned advocate for respondent no. 2 would at the outset submit that this being a proceeding invoking the powers of this Court under section 482 of the Code of Criminal Procedure, it is only to be examined as to if prima facie facts disclose ingredients of the offences being alleged. This Court cannot resort to a mini trial. It cannot undertake minute scrutiny of the material from the chargesheet. It is the job of the trial Court. The whole purpose of exercising this power is to ensure that the individuals are not put to any avoidable harassment.

13. In support of their submissions, they would rely upon the following decisions :-

- i) ***MEDCHL Chemicals and Pharma (P) Ltd. Vs. Biological E. Ltd. and others; (2000) 3 SCC 269,***
- ii) ***Rajesh Bajaj Vs. State NCT of Delhi and others; (1999) 3 SCC 259,***
- iii) ***Prashant S/o Rajkumar Jhunhunwala Vs. Union Territory of Daman and Diu at Daman and others; 2009 SCC OnLine Bom 752***

14. The learned APP and the learned advocate for respondent no. 2 would submit that the applicants had undertaken by way of contract, to supply, install and make operational R.O. and water bottling plant. In spite of having received major portion of the consideration, they failed to do so and many persuasion did not yield any result and

the circumstances squarely make out a case of applicants having a *mens rea* to dupe respondent no. 2 by resorting to cheating. They would submit that opportunity deserves to be extended to the prosecution to substantiate the allegations.

15. Indeed, this being a proceeding under section 482 of the Code of Criminal Procedure, this Court has inherent limitations. It is trite that no threadbare scrutiny of the material collected by the prosecution can be undertaken. There cannot be a mini trial to ascertain if the allegations have any merit. The whole purpose is to find out from the facts and circumstances as to whether the ingredients of the offence being alleged can be made out. This precisely has been culled down in the matter of **MEDCHL Chemicals and Pharma (P) Ltd.** (supra). In the process, it has also referred to the observation in the matter of **Trisuns Chemical Industry V. Rajesh Agarwal; (1999) 8 SCC 686.**

16. Paragraph no. 16 from **MEDCHL Chemicals and Pharma (P) Ltd.** (supra) reads as under :-

“16. Be it noted that in the matter of exercise of the High Court's inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of court. The Criminal Procedure Code contains a detailed procedure for investigation, charge and trial, and in the event, the High Court is desirous of putting a stop to the known procedure of law, the High Court must use a proper circumspection and as noticed above, very great care and caution to quash the complaint in exercise of its inherent jurisdiction. Recently, this Court in Trisuns

Chemical Industry v. Rajesh Agarwal [(1999) 8 SCC 686]
observed: (SCC pp. 689-90, paras 5-9)

“5. The respondent's counsel in the High Court put forward mainly two contentions. The first was that the dispute is purely of a civil nature and hence no prosecution should have been permitted, and the second was that the Judicial Magistrate of the First Class, Gandhidham has no jurisdiction to entertain the complaint. Learned Single Judge has approved both the contentions and quashed the complaint and the order passed by the Magistrate thereon.

6. On the first count learned Single Judge pointed out that there was a specific clause in the memorandum of understanding arrived at between the parties that disputes, if any, arising between them in respect of any transaction can be resolved through arbitration. The High Court made the following observations:

‘Besides supplies of processed soyabean were received by the complainant Company without any objection and the same have been exported by the complainant Company. The question whether the complainant Company did suffer the loss as alleged by it are matters to be adjudicated by the civil court and cannot be the subject-matter of criminal prosecution.’

7. Time and again this Court has been pointing out that quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions (vide State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335] and Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259]).

8. In the last referred case this Court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations: (SCC p. 263, para 10)

'10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.'

*9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335]."*

17. In **Rajesh Bajaj** (supra) it has been held that if the averments in the complaint *prima facie* make out a case for investigation, the High Court cannot quash the complaint merely because an ingredient or two of the offence have not been detailed in the complaint and even it would not be proper to quash the complaint simply by observing that it is a commercial or money transaction.

There could possibly be an offence of cheating even in commercial transaction.

18. Bearing in mind these principles, if one examines the matter in hand, it is abundantly clear that as is being rightly submitted by the learned advocate for the applicants, their dispute with respondent no.2 is clearly arising out of a commercial transaction having no iota of allegations or material to even *prima facie* demonstrate any dishonest and fraudulent intention on their part much less since inception.

19. Even according to the prosecution, it is respondent no. 2 who had contacted the applicants through a portal Indiamart as he was intending to set up R.O. and water bottling plant. There were deliberations. Even he himself had been to their place. Part of consideration was paid from time to time. The plant and machinery was also installed. Precisely, even for securing the licence for running such business, samples were drawn. Those were sent to the concerned government department.

20. As can be deduced from the FIR itself as also the papers, it is not that nothing was supplied in spite of applicants having received major part of the consideration. In fact, machinery was supplied. It was installed, even the applicants' workers who are the co-accused, who are not before us, had been to the site at least on 3 to 4 occasions

albeit respondent no. 2 was perceiving that the plant was having some limitations and was giving problem in running it. Some safety features were not there. R.O. plant was leaking etc.

21. Though it is not clear as to when respondent no.2 for the first time contacted the applicants. According to the FIR, on 14-02-2023, he made the initial payment of Rs.51,000/- and the FIR was lodged on 21-08-2023. All the afore-mentioned facts and circumstances would demonstrate that pursuant to the order placed by him with the applicants, both the sides had made attempt to perform their part of the contract and this period was of 6 months and it is thereafter that the dispute seems to have flared up and has culminated in lodging of the FIR on 21-08-2023.

22. We are demonstrating these circumstances to substantiate our inference that it is clearly a commercial transaction and a civil dispute and is being tried to be given a cloak of an offence. The matter is squarely covered by the decisions of the Supreme Court cited by learned advocate for the applicants Mr. Jamalpurkar in the matters of ***1) Usha Chakraborty V. State of West Bengal and another, ii) Sachin Garg Vs. State of Uttar Pradesh and another, iii) V.Y. Jose and another Vs. State of Gujarat, iv) M N G Bharateesh Reddy Vs. Ramesh Ranganathan and another and v) Mitesh Kumar J. Sha Vs. The State of Karnataka and others*** (supra).

23. In this regard, it is also important to note that even when according to respondent no.2, the allegations of theft are attributable to the employees of the applicants, and not the applicants themselves, he has ensured that even those allegations about which he has not immediately made any attempt to lodge complaint, the applicants are roped in along with the applicants.

24. True it is that as has been laid down in the matter of **Rajesh Bajaj** (supra) even in a commercial transaction, there could be dishonest and fraudulent intention. However, there is dearth of any material to make any observations in the present matter on that line.

25. In the matter of **Prashant S/o Rajkumar Jhunjunwala** (supra) a division bench of this Court had an occasion to consider a similar fact situation as is indicated in the matter of **Rajesh Bajaj** (supra), wherein, in spite of *prima facie* it being a commercial transaction there were circumstances indicating that the accused therein was harbouring a dishonest and fraudulent intention since inception. The accused company had entered into an agreement with the complainant for supply of paper, however, in spite of supply, payment was avoided. In fact, it had no such business and had never paid for purchasing paper worth crores of rupees which was the pretension made by the accused and labouring under such, the complainant had supplied paper and was victim of a case of cheating.

These peculiar circumstances are conspicuously absent in the matter in hand. There is nothing to demonstrate that the applicants are not engaged in any business much less dealing in sale of machinery and installation of R.O. and water bottling plant. There are neither the allegations nor the material. If this is so, we have no manner of doubt that for the obvious purpose, attempt has been made to give colour of crime to a purely civil dispute.

26. It would be sheer abuse of the process of law to make the applicants face the prosecution. Their case is squarely covered by the parameters laid down in the matter of ***State of Haryana V/s Bhajan Lal; 1992 Supp (1) SCC 335.***

27. The Application is allowed.

28. Crime no. 344 of 2023 registered with Muktainagar Police Station, District – Jalgaon for the offences punishable under section 177, 201, 379, 406, 420 read with 34 of the Indian Penal Code and consequent Regular Criminal Case no. 43 of 2024 pending before the learned Judicial Magistrate, First Class, Muktainagar, District - Jalgaon are quashed and set aside.

[SHAILESH P. BRAHME]
JUDGE

arp/

[MANGESH S. PATIL]
JUDGE