



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

CRIMINAL APPLICATION NO. 4196 OF 2019

1. Sharad Dadhich S/o Kailash Chand Sharma,
Age : 40 years, Occu. : Business
House No. D-7/8, Shivaji Colony,
Baran, Baran
Rajasthan – 325 205.
 2. Kailash Chand Sharma,
Age : 40 years, Occu. : Business,
House No. D-7/8, Shivaji Colony,
Baran, Baran
Rajasthan – 325 205.
- .. Applicants

Versus

1. Mahesh S/o Vishwanath Ghuge,
Age : 36 Years, Occu. : Business,
R/o Ahinsa Nagar, Plot No. 37
Aurangabad, Jinsi Aurangabad.
 2. The State of Maharashtra,
Through Jinsi Police Station,
Public Prosecutor.
- .. Respondents

Shri Amar D. Soman, Advocate for the Applicants.
Shri Joydeep Chatterji, Advocate for the Respondent No. 1.
Shri M. M. Nerlikar, Addl.P.P. for the Respondent No. 2.

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

CLOSED FOR ORDER ON : 03.04.2024
ORDER PRONOUNCED ON : 10.04.2024

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

. Heard both the sides finally.

2. Applicant No. 2 Kailashchand Sharma died during the course of proceedings. Criminal application as against him stands abated. Applicant No. 1 is seeking quashment of first information report registered for the offences punishable U/Sec. 420, 406 and 408 r/w Sec. 34 of the Indian Penal Code (for short "I. P. Code") against him and consequential proceedings bearing R.C.C. No. 2131 of 2020 pending before the Chief Judicial Magistrate, Aurangabad.

3. The respondent No. 1 is the informant. He is a contractor, who received contract for construction of a bridge at Benganga river, Tq. Kota, Dist. Baran (State of Rajasthan). Informant is resident of Aurangabad and it was not possible to execute the contract. Therefore, applicants were engaged by him for executing construction work. Applicants collected requisite machines and vehicles from the place of informant to execute the work. In this backdrop, complaint was made by the respondent No. 1 for the offence U/Sec. 420, 406, 408 r/w Sec. 34 of the I. P. Code.

4. It is alleged by the respondent No. 1 that as per the agreement between the parties work commenced from 04.03.2015. Machinery and vehicles were entrusted to the applicants. Amount of Rs. 2,82,57,000/- and Rs. 10,00,000/- for the expenses and wages were credited to the accounts of applicants which was not accounted for by them. When the informant had been to the place of applicants for taking back

vehicles and machinery, he was threatened by them. They refused to hand over the machinery. Machinery was illegally detained and engaged for some other work. It is further alleged that five cheques issued by the informant's father were attempted to be encashed. It is the case of the prosecution that informant was defrauded for Rs. 56,00,000/-.

5. Learned counsel for the applicants submits that informant was the contractor, who sub-let the work to the applicants. As per the contract, applicants were issued five cheques of different amounts totaling to Rs. 1,10,00,000/- towards the work. Cheques were dishonoured and applicants were required to call upon the informant for making arrangement for payment vide notices dated 21.08.2018 and 11.10.2018. Informant gave false reply and refused to make payment. Applicants filed complaints U/Sec. 138 of the Negotiable Instruments Act (for short "N. I. Act") before the Court of Judicial Magistrate First Class, Baran. The proceedings are pending.

6. Learned counsel for the applicants submits that the transaction between the parties is commercial in nature. To dodge the payment for the work done by the applicants impugned FIR has been lodged. It is further submitted that no cause of action arose at Aurangabad. The dispute between the parties is purely civil in nature, which is dragged in a criminal proceedings and the same is liable to be quashed.

7. Learned Additional Public Prosecutor and the learned

counsel for the respondent No. 2 repel the submissions of the learned counsel for the applicant. They would submit that machinery and the vehicles were acquired by the applicants from Aurangabad. As that part of cause of action arose at Aurangabad, impugned FIR has been rightly lodged at Jinsi Police Station, Aurangabad. They would further submit that there is incriminating material collected during the course of investigation to make out offence against the applicants. During the course of investigation, seizure panchanama of machinery and vehicles was conducted, which would indicate incriminating role of the applicants.

8. We have considered rival submissions of the parties as well as relevant papers of investigation. Learned counsel for the applicants would refer to the notices issued on 21.08.2018 and 11.10.2018 demanding payment after dishonour of cheques and the reply issued by the informant on 14.09.2018. Record reveals that contract was given to the informant, which was being executed by the applicants. It further reveals that five cheques issued by father of the informant were dishonoured and the proceedings for actions U/Sec. 138 of the N. I. Act are *sub judice* before the competent Court at Baran.

9. There was commercial transaction between the parties. Machinery and the vehicles of the informant were taken by the applicants to the place of working. The cheques issued by the informant's father were dishonoured. It is the plea of the informant that cheques have been issued towards security. Reply

given by informant on 14.09.2018 shows that there was contract between the parties and there was dispute over the payment. The payment of the cheques were instructed to be stopped. From this material, we have no iota of doubt, to infer that the dispute between the parties is civil in nature arising out of the contract. Material on record does not indicate element of dishonest intention, cheating or criminal breach of trust.

10. Due to the dispute over the payment of the commercial transaction, in all probabilities informant has lodged impugned FIR. We find that there is substance in the submissions of the learned advocate for the applicants. It would be an abuse of process of law to proceed against the applicant No. 1.

11. Record does not reveal that there is any written contract between the parties. Undisputedly, the work of construction was executed in the State of Rajasthan more specifically at Kota, Dist. Baran. Even the proceedings U/Sec. 138 of the N. I. Act have been filed in the Court at Baran. We do not see that there was any cause of action to lodge FIR at Jinsi Police Station, Aurangabad. The transaction between the parties and the confrontation occurred in October 2018 were also at Baran. The complaint should not have been filed, entertained and investigated by the police at Baran.

12. We are of the considered opinion that the application deserves to be allowed. We, therefore, pass following order :

O R D E R

(i) The criminal application is allowed to the extent of applicant No. 1.

(ii) FIR bearing CR No. 331/2019 registered with Jinsi Police Station, Aurangabad for the offences U/Sec. 420, 406 and 408 r/w Sec. 34 of the I. P. Code and consequential proceedings bearing R.C.C. No. 2131 of 2020 pending before the Chief Judicial Magistrate, Aurangabad are quashed and set aside.

(iv) The criminal application is disposed of.

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

bsb/April 24