

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 46 OF 2013

1) Mr. Michael Edward Kedem
Aged : 45 years,
R/at : 301 and 302, Enchante CHSL.,
Plot No.438, 14th Road, Khar West,
Mumbai 400052
..... Applicant
V/s.

1) The State of Maharashtra
At the instance of Islampur Police Station

2) Mr. Satish Krishnaji Patil
Aged : 50 years,
At and Post Sahkarale,
Taluka Walva, District Sangli,
Pin Code No.415415.
..... Respondents

Mr. Manoj Mohite, Sr. Advocate a/w. Ms. Sonal Parab, Mr. Mustafa Bohara
and Mr. Vaibhav Bangar i/b. Rajeev Sawant and Associates for the
Applicant.

Mr. J.P. Yagnik, APP for the State.

**CORAM: A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 15th APRIL, 2024
PRONOUNCED ON : 11th JUNE, 2024**

JUDGMENT : [PER : SHYAM C. CHANDAK, J.] :-

1) Applicant, accused in F.I.R.No.03/2013 registered with
Islampur Police Station, Dist. Sangli, for an offence under Section 420 r/w.
34 of the Indian Penal Code, has filed this Application under Section 482 of

the Criminal Procedure Code, for quashing of the said F.I.R.

2) Heard Mr. Mohite, learned Senior Advocate for the Applicant and Mr. J.P. Yagnik, learned APP for the State.

3) Record indicates that, by an Order dated 31st January 2013, Rule was granted and it was directed that, in the event Respondent No.1 – *Islampur* Police Station desires to arrest the Applicant, 72 hours' advance notice in writing shall be issued to the Applicant only with a view to enable him to adopt appropriate proceedings. Further, by way of ad-interim relief, it was directed that, though the investigation shall continue, the charge-sheet shall not be filed as against the Applicant without prior permission of this Court.

3.1) Thereafter, learned Advocate Mr. Nida Kazi filed '*vakalatnama*' for Respondent No.2, followed by his affidavit-in-reply, opposing the Application. However, none appeared for Respondent No.2 when Application was taken up for final hearing.

4) On 07th January, 2013 Respondent No.2 lodged a report wherein he narrated that, he has been residing at Village *Sakharde*, District Sangli. In the month of October 2010, the Applicant, Directors and Promoters of M/s. Innovative Technology Enzyme Company, Prabhadevi, Mumbai – 400025 and Applicant's co-accused Mr. Alon Globus, Mr. Yosef Atoon and Mr. Ghaluke Nachal contacted with Respondent No.2 and the management of '*Rajaram Bapu Patil Sahakari Sakhar Karkhana*' Limited,

Rajarampur Nagar (for short '*the Sugar Factory*'). At that time, the Applicant represented to Respondent No.2 that, his Company is associated with M/s. I-tech W. Limited Company, at Israel. That, 60% cement may be saved in building road and concrete products with the help of the technology of M/s. I-tech W. Limited. On 16th October, 2010 a meeting was held amongst the Director of the said Company, Mr. S.D. Korde-Manager of the Sugar Factory and Mr. P.V. Kamlakar, Civil Engineer (P.W.D.). Pursuant to the said meeting, an Agreement was entered into to construct 2 kms *Islampur Mulik Panand* Road – and 2 kms *Bauchi to Wadva* Road on experiment basis with the help of said technology.

4.1) However, as the Company of the Applicant was not having necessary registration with the PWD, the Sugar Factory management issued the said work order in the name of Respondent No.2 and approved the details of the cost of construction, materials, payments, etc with respect to the company of the Applicant. Accordingly, in the month of February, 2011 the said roads were constructed with the help of the said technology and it's completion report was filed on 30th March, 2011. An amount of Rs.38,21,720/- was paid to the Applicant from time to time out of the agreed construction cost Rs.58,50,000/- of the said roads. Yet, within a week's time, the said road developed cracks and started giving away due to plying of goods vehicle thereon. Immediately, the Civil Engineer brought that fact to the notice of the Applicant's Company. Thereafter, in July, 2011

the said roads developed deep potholes. Therefore, the Applicant's Company was informed to repair the roads at its cost but there was no response.

4.2) It is alleged that, even though the Applicant and the co-accused knew that, said road construction technology was useless, they deceived the Respondent No.2 to believe their false representation that said technology is effective and dishonestly induced him to spend Rs.38,21,720/- on the said road construction. Thereafter the Applicant's company did not repair the damaged road at its cost. Yet, the Applicant's Company displayed on its website that, the said road construction work was completed successfully. Thus, the Applicant and his associates cheated Respondent No.2, hence, police registered the impugned F.I.R.

5) Learned counsel for the Applicant submitted that, the Respondent No.2 failed to supply the required machinery on time for the road construction. There were lapses on the part of Respondent No.2 in making payment of the road project. After completion of the road construction work, the necessary soil testing was done and the report thereof was accepted. Thereafter, the Applicant extended all the necessary support and co-operation to resolve the issues in respect of the said road and also done the road repairing work as wished and wanted by Respondent No.2. However, for non-payment of the project amount, it was difficult to carry out the work further. Thus, the project could not be

completed due to non-cooperation by Respondent No.2 and the Sugar Factory.

5.1) Learned counsel submitted that, there was no misrepresentation by Applicant as alleged in the F.I.R. because all the decisions regarding the road construction project and the required funds, cost, etc. were taken jointly by the Applicant, Respondent No.2 and others. There was no instance when the Applicant acted *malafidely*, as alleged. The Company of the Applicant never claimed that, the said road project was successful. In the backdrop, the dispute raised in the impugned F.I.R. is purely of civil nature. There is material delay in lodging the F.I.R. Similar F.I.R. bearing No.171/2012 was registered against the Applicant and others with B.K.C. Police Station, Mumbai with similar allegations. However, after due investigation, 'C Summary Report' came to be filed in that F.I.R. by the Investigating Officer concluding that, the dispute in the said F.I.R. was of civil nature. However, the Respondent No.1 – *Islampur* Police Station registered the impugned F.I.R. which is illegal.

6) Per contra, learned A.P.P. vehemently submitted that, there is sufficient material against the Applicant that, he has committed the present crime. Therefore, the Application may be dismissed.

7) Record indicates that, as per the minutes of the meeting dated 16th October 2010, Mr. S.D. Korade, Mr. P.V. Kamalakar, Mr. Alon Globus, Mr. Atul Morarka, Mr. Ralphy Jhirad and the Applicant had a meeting and it

was resolved that, 'Ecological soil stabilization' offer given by the Applicant will be applied for the roads in question. Per square meter construction cost was also fixed and it was decided that, since the Applicant's Company has no registration with PWD, the work order will be issued in the name of Respondent No.2. It was also decided that, after completion of the soil stabilization for road construction, if the Sugar Factory is interested in asphaltting the said road, it will be carried out under the consultancy of the Applicant's Company. The e-mails between the parties show that, there were issues as regards payment of the construction cost and the repair works. The said e-mails also revealed that, the road construction at certain site developed leakage and said issue was addressed by the Applicant side. There was also dispute on account of not supplying the labour and machinery on time which resulted in increasing the work cost etc. It appears that, as alleged, the Applicant did the work as per the agreement/contract and the issue was with respect to its quality only.

7.1) In view of the aforesaid circumstances it is apparent that, the dispute in question was of civil nature as the work of the subject roads' construction was based on a contract. There is nothing on record showing that, before or at the time of issuing the work order, there was any dishonest or fraudulent intention on the part of the Applicant to deceive and cheat Respondent No.2. Therefore in our opinion, the present F.I.R. is nothing but an attempt to settle the civil dispute by taking recourse to

criminal law.

7.2) In view thereof, the impugned F.I.R.No.03/2013 registered with Islampur Police Station, Sangli requires to be quashed as continuation of the same would be abuse of process of law. Hence, the said F.I.R. is liable to be quashed *qua* the Applicant and accordingly is quashed.

7.3) The Application is allowed in the aforesaid terms. Rule is made absolute.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

PREETI
HEERO
JAYANI

Digitally signed by
PREETI HEERO
JAYANI
Date: 2024.06.15
17:02:46 +0530