



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1414 OF 2022

Karan Deepak Jadhav,
Age 32 years, Occupation: Contractor,
R/o.1896, E Ward Ram Tara Bunglow,
Rajarampuri, Kolhapur, Tal: Karvir,
Dist.: Kolhapur.

.....Applicant

Vs.

1. The State of Maharashtra,
Through Sr. P. I. Palus Police Station,
Palus, Dist.: Sangli.
2. Dharmaveer Amrutrao Gaikwad,
Age 42 years, Occupation: Agriculturist,
Business, Residing at Nagrale, Taluka: Palus,
District : Sangli.

.....Respondents

Mr. Jayant Bardeskar, for the Applicant.
Mr. A. I. Satpute, APP, for Respondent No.1-State.
Mr. Kuldeep Nikam, for Respondent No.2.

CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.

RESERVED ON : 2nd JULY, 2024.

PRONOUNCED ON : 18th JULY, 2024.

JUDGMENT (Per Dr. Neela Gokhale) :-

- 1) Applicant seeks quashing of FIR bearing C.R.No.21/2022 registered with Palus Police Station, District Sangli for offences punishable under Sections 406, 409 and 420 of the Indian Penal Code 1860 ("IPC").
- 2) By Order dated 16th December 2022, this Court directed the police to continue investigation but not to file the charge sheet *qua* the

Applicant, without leave of this Court. Thereafter this Court admitted the Application and the interim Order was confirmed by Order dated 26th December 2022.

2.1) Mr. Jayant Bardeskar appears for the Applicant. Mr. Satpute, Learned APP represents that State and Mr. Kuldeep Nikam, learned counsel represents the Respondent No. 2 (“Complainant”)

3) Shorn of unnecessary details, the facts of the case are that, in 2018 the complainant owned a firm under the name and style of ‘Rajwardhan Constructions’ undertaking construction activities. Through common acquaintance, the complainant was introduced to the Applicant who was also in the construction business in Kolhapur. One Shri Shankar Patil, friend of the complainant suggested to him that they should approach the Applicant to collaborate in a Joint Venture since they had a Work Order to construct an Airport at Panvel. He also suggested that, since the work was substantial, they would need a third partner and hence they should request the Applicant and rope in his firm to undertake the contract. The parties had a meeting and it was decided that, they will enter in a Joint Venture to undertake the construction of the Airport. A Joint Venture Agreement was drawn up and executed. It was decided that the Applicant and one Deepak Jadhav would finance the project; Shri Patil would draw up the bills and undertake to draw up all necessary agreements and the paper work while the complainant was to provide vehicles necessary for

execution of the work. The Joint Venture was registered as a partnership firm under the name of 'M/s. KJRVP' and license under the Shop Act was also procured from the Kolhapur Municipal Corporation.

3.1) Since the Company neither had a KYC, nor a GST No., a bank account was not opened in the name of the Company. The work of construction of the Panvel Airport ended in September 2018. As per the work discharged, they started receiving money against their bills from one M/s. Thakur Infra Projects Pvt. Ltd. (TIPL) JMMIPL JV Pvt Ltd. However, since KJRVP did not have a bank account, this money was received and deposited in the KJ Group of Companies which belonged to the Applicant. The complainant learnt that, even the work order was issued in the name of KJ Group of Companies. The complainant thus alleges that, the Applicant cheated the complainant by depositing the money received towards the discharge of the contract in the account of KJ Group of Companies instead of KJRVP Company.

3.2) The complainant confronted the Applicant and demanded his share of the money. Accordingly, the Applicant along with Shankar Patil came to the house of the Complainant, but instead suggested that, they should close KJRVP Company. Some amount was agreed to be paid to the complainant, but it is his allegation that, till date, he has not received a single paisa. Thereafter, Applicant requested the complainant to give on a license basis his Dumper and Poclain machine. The Applicant promised to

pay the earlier outstanding amount along with the rent of the said machinery. The complainant agreed to rent him the said machinery/vehicle but till date, he has not received any money towards the earlier outstanding nor the license fee for renting the machinery. It is the allegation of the complainant that, the Applicant owes him an amount of Rs.49,77,490/- towards the settlement of the bills in respect of the Airport construction along with the rent for hiring machinery/vehicle for him. It is his say that, the Applicant has thus cheated him of his money and accordingly he has filed the FIR impugned herein.

4) Mr Bardeskar submits that, the present F.I.R. arises out of a civil dispute between partners. As per the Joint Venture Agreement, responsibilities and duties were distributed among the three parties. Furthermore, the Joint Venture Agreement specifies that, any dispute arising out of the contract shall be referred to a Mediator or to arbitration. The dispute being entirely of civil nature cannot be brought within the purview of criminal law. Mr Bardeskar further contends that, since the KJRVP Company did not have a GST No. nor KYC required to open a bank account, the Company of the Applicant was used for all the transactions with the consent of parties. He further submits that, the Work Order was issued in the name of KJ Group of Companies and it is on account of the default of the complainant and Shankar Patil that the Applicant was unable to invest additional money in the work contract. It is thus the submission of

Mr. Bardeskar that, the entire dispute arise out of a commercial transaction and the dispute arising therefrom should be the subject matter of arbitration and not of any criminal prosecution. He thus submits that, perusal of the F.I.R. does not make out any offence punishable as alleged and hence urges the Court to allow the Application.

5) Mr. Nikam reiterated the contents of the F.I.R. He also drew our attention to the Joint Venture Agreement executed between M/s. KJ Group of Companies; M/s Rajwardhan Constructions; M/s. Vedant Constructions on one hand and M/s Thakur Infra Projects Pvt Ltd, Panvel. He contended that, it was clear to all the parties that M/s. Thakur Infra Projects assigned Work Orders received by it to the three firms for the purpose of execution and these three firms together through its Joint Venture were to execute the same. The profit sharing ratio was also specified in the agreement. Hence it does not lie in the mouth of the Applicant to now say that the Work Order relating to construction of the Panvel Airport was in the name of M/s. KJ Constructions and hence there was no offence of cheating. There are other documents indicating that, some bills were paid to Shri Patil. KJ constructions has also executed a Power of Attorney in the name of Shri Patil to facilitate him to discharge his part of the contract in respect of executing necessary documents, keeping details about vehicles supplied by the complainant's firm etc. Relying on these documents, Mr. Nikam contends that, the intention to cheat was from

the inception and this is not merely a breach of contract. Hence he prays that, the Application may be dismissed. Mr. Satpute, learned APP supports the case of the complainant.

6) Heard the learned counsels and have gone through the documents on record with their assistance.

7) Cheating is defined under Section 415 of I.P.C. which reads as follows: -

“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”.

8) A perusal of the aforesaid provision shows that, the offence of cheating is in two parts. The first is where a person fraudulently or dishonestly deceives another in inducing that person to deliver any property to any person etc. The second part of the offence would be made out if somebody is deceived to do an act which causes damage or harm to that person “in body, mind, or reputation or property is said to have cheated”. Time and again, the Supreme Court has reiterated that, in order to make out an offence under cheating, the intention to cheat or deceive should be

right from the beginning. In the case in hand, a plain reading of the FIR clearly reveals that, though the construction work assigned to the Joint Venture by M/s.Thakur Infra Projects was to be carried out by all three parties together and were to also share the profits in an agreed proportion, the Applicant's company deposited all the money in its own account and refused to give the complainants share as agreed. The explanation proffered by the Applicant is that a bank account did not exist in the name of the JV and hence the money was deposited in its account. This explanation appears also in the F.I.R., but explanation as to what stopped the Applicant from paying the complainant his share of profit is patently absent in the entire Application.

9) In the case of *Hridaya Ranjan Prasad Verma vs. State of Bihar*,¹ the Apex Court while explaining the distinction between 'cheating' and 'breach of contract' held as under:

“15. In determining the question, it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time

¹ (2000) 4 SCC 168.

when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

(Emphasis supplied)

10) The facts in the present case prima facie indicate that, though a Joint Venture was executed between the parties, the Applicant never had the intention to distribute the profits in the ratio of the agreement. It is also not the Applicant's case that, there was some amount paid and there is a dispute regarding balance to be paid etc. From the F.I.R. it is clear that, the complainant has not been paid a single paise till date. This prima facie shows the *mala fide* intention of the Applicant right from the inception of the Joint Venture. Moreover, the only contention of the Applicant is that, there is an arbitration clause in the contract and hence the dispute is entirely civil in nature and no criminal offence is made out. In the matter of *Digvijaysingh Himmatsingh Jadeja vs State of Gujrat*,² the Supreme Court has observed that a wrong may be civil wrong, or in a given case be a civil wrong and equally constitute a criminal offence. The ingredients of a criminal offence are to be specified to initiate criminal proceedings.

² (2023) INSC 1045.

11) In the facts of the present case, we are satisfied that prima facie, ingredients of the offences as alleged are made out. On the face of it, the F.I.R. discloses commission of a cognizable offence. In our jurisdiction under Article 226 of the Constitution, we are not expected to conduct a mini trial by determining veracity of the documents and Agreements placed on record.

12) The Application is accordingly dismissed.

13) Rule is accordingly discharged.

13.1) Interim Orders stand vacated.

14) The Investigation Officer is permitted to file final report before the Court concerned.

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)