

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 414 OF 2016

Mr. Sheetal Talwar	]	
Aged : 45 years, Occ. Business,	]	
Residing at Taj Wellington Mews,	]	
33, Nathalala Parekh Marg,	]	
Colaba, Mumbai – 400 013.	]	... Petitioner

V/s.

1. The State of Maharashtra	]	
Through, The Senior Inspector,	]	
Dadar Police Station, Mumbai.	]	
2. Indiabulls Real Estate Pvt. Ltd.	]	
Senapati Bapat Marg,	]	
Elphinstone, Mumbai – 400 023.	]	... Respondents

Mr. Ashok Mundargi, Senior Counsel a/w. Ms. Anaisha Zachariah & Ms. Shruti Shirke i/b. TRD Associates for Petitioner.

Dr. Dhanalakshmi S. Krishnaiyer, A.P.P. for Respondent No.1-State.

Mr. Abhishek Salian i/b. VIDHII Partners for Respondent No.2.

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

DATE : 29th April 2024.

ORAL JUDGMENT (Per : A. S. Gadkari, J.) :-

1) By the present Petition under Article 226 of the Constitution of India read with Section 482 of Criminal Procedure Code, the Petitioner, original accused No.1, has prayed for quashing of CR No. 468 of 2015 dated

17th December 2015 registered with Dadar Police Station, Mumbai, under Sections 406, 420 read with 34 of the Indian Penal Code (I.P.C.), lodged by the Deputy General Manager of Respondent No.2, Company.

1.1) Record indicates that, by an Order dated 23rd March 2016, Rule and interim relief in terms of prayer Clause (c) of the Petition was granted in the Petition and therefore further investigation of present crime was stayed.

2) Heard Mr. Mundargi, learned senior counsel for Petitioner, Dr. Krishnaiyer, learned A.P.P. for Respondent No.1-State and Mr. Salian, learned counsel for Respondent No.2. Perused record produced before us.

3) The crime in question is lodged by Mr. Deepak Mishra, Deputy General Manager (Adm.) of the Respondent No.2, Company.

The prosecution case in brief is that, the Petitioner being the Chairman and Managing Director of Gastro Pub Private Limited, took the suit premises on 'Leave and Licence' basis by executing Letter of Intent dated 16th January 2013. It was promised by Petitioner and co-accused that, they will subsequently execute Leave and Licence Agreement and would pay a sum of Rs. 3,59,646/- per month towards licence fees for the suit premises. That, the Petitioner and co-accused paid only Rs. 3,59,646/- and did not pay the agreed balance deposit and by issuing a Letter of Intent took possession of the suit premises. That, the accused did not pay the agreed licence fees and required deposit to the Respondent No.2 and used the suit premises for conducting its restaurant. It is therefore alleged that, the Petitioner

committed an offence as contemplated under Section 406, 420 read with 34 of I.P.C..

4) The aforestated facts are deciphered from the First Information Report lodged by Mr. Deepak Mishra. The said facts are not disputed by the learned Advocate for Respondent No.2.

Mr. Mundargi, learned senior counsel, on instructions, submitted that, as a matter of fact, the Petitioner's company handed over the possession of suit premises to Respondent No.2 in the month of August 2016 itself.

5) The Hon'ble Supreme Court in the case of *Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr., reported in (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929*, in para No.8 has held as under :

“8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. [See

: *G. Sagar Suri v. State of U.P [2000 (2) SCC 636] and Indian Oil Corporation vs. NEPC India Ltd. [2006 (6) SCC 736].*”

6) The case in hand is a clear example of how a civil litigation has been given the colour of criminality and the present crime is registered against the Petitioner and co-accused.

7) The Hon’ble Supreme Court in the case of State of *Haryana & Ors. Vs. Bhajanlal & Ors., reported in 1992 Supp (1) SCC 335*, in para No. 102 (5) has held that,

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1)

(2)

(3)

(4)

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6)

(7)”

The said Guidelines are also squarely applicable to the case in hand.

8) In view of the above, we find that, the lodgment of present crime by the Respondent No.2 is a sheer abuse of process of law, need not be continued hereinafter and required to be quashed.

9) In view of the above, CR No. 468 of 2015 dated 17th December 2015 registered with Dadar Police Station, Mumbai, under Sections 406, 420 read with 34 of I.P.C. is quashed and set aside.

10) Petition is allowed in terms of prayer Clause (a). Rule is made absolute.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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