

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

WRIT PETITION NO. 2573 OF 2021

SANTOSH
SUBHASH
KULKARNI

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Shri Vinayak Suresh Tejam
Age – 32 years, Occu.- Advocate
R/o. Amboli Raod, Ajara, Dist. Kolhapur ...Petitioner

Versus

1. The State of Maharashtra
2. Shri Ramchandra Krushna Mhadgut
Age – 38 yrs., Occu – Agri & Business,
R/o. Zambare, Tal. Chandgad,
Dist. Kolhapur ...Respondents

Mr. Anand Patil, for the Petitioner.
Mr. Prashand Jadhav, APP for the State/Respondent No.1.
Mr. Pravin Dabade, a/w Ganesh Patil, for Respondent No.2.

**CORAM: N. J. JAMADAR, J.
DATED: 14th MARCH, 2024**

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the Counsel for the parties, heard finally.

2. This petition under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 ("the Code") calls in question the legality, propriety and correctness of a judgment and order dated 12th August, 2020 passed by the learned Additional Sessions Judge, Kolhapur, in Criminal Revision Application No.13 of 2016, whereby the revision application preferred by the petitioner came to be dismissed

affirming the order passed by the learned Judicial Magistrate, First Class, Chandgad, of issue of process for the offences punishable under Sections 403, 420, 424, 467 and 468 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") against the petitioner and Vijay Vishnu Khule, the accused No.2 in RCC No.17 of 2016.

3. Respondent No.2 – the complainant started a Cashew Nut Processing Plant at Mauje Zambare, Taluka Chandgad. The complainant was making efforts to obtain subsidy from the District Industries Centre, Kolhapur. In the month of November, 2009, the petitioner and accused No.2 approached the complainant and induced him to deliver documents pertaining to the proposal submitted by the complainant with the District Industries Centre for grant of subsidy and a sum of Rs.20,000/- to process the said proposal, in the presence of a witness Mr. Sanjay Patil. The complainant further alleged that the accused also induced him to open an account with Bank of India, Sirsangi Branch, for the credit of the subsidy amount. After the account was opened and the cheque book was delivered, the accused made a false representation to the complainant that for processing the proposal they may immediately require the blank

signed cheques and, thus, made the complainant to deliver three blank signed cheques.

4. Eventually, on 22nd December, 2010 a sum of Rs.19,37,000/- by way of subsidy was credited in the said account of the complainant. Upon being informed, the complainant visited the bank. It transpired that out of the said amount by abusing the custody of the signed blank cheques the petitioner – accused No.1 had withdrawn a sum of Rs.5,00,000/- and accused No.2, a sum of Rs.5,75,000/-, fraudulently. Upon being confronted accused bought time on the pretext that on account of financial difficulties they had withdrawn the amount and they would repay the same. Despite repeated assurances the amount was not returned. Later on, the accused flatly denied to repay the said amount. Hence, the complainant lodged a private complaint.

5. The learned Magistrate ordered an enquiry under Section 202 of the Code. The Chandgad Police submitted a report. After considering the allegations in the complaint, verification statement of the complainant, the report of the police and the documents on record the learned Magistrate was persuaded to issue process against the accused for the offences punishable

under Sections 403, 420, 424, 467 and 468 read with Section 34 of the Penal Code.

6. Being aggrieved, the petitioner and co-accused carried the matter in revision. By the impugned order, the learned Additional Sessions Judge declined to interfere with the order passed by the learned Magistrate, opining, *inter alia*, that the learned Magistrate has committed no error in issuing the process against the accused.

7. Being further aggrieved the petitioner – accused No.1 has preferred this petition.

8. I have heard Mr. Patil, the learned Counsel for the petitioner, Mr. Jadhav the learned APP for the State – respondent No.1 and Mr. Dabade, the learned Counsel for respondent No.2, at some length.

9. Mr. Patil, the learned Counsel for the petitioner, submitted that there was an inordinate delay in filling the complaint before the learned Magistrate. The amount was allegedly credited to the account of the accused in the month of December, 2010. However, the complaint came to be lodged in the month of July, 2013. The aspect of delay in lodging the complaint has not been properly evaluated by the learned Magistrate as well as the learned Additional Sessions Judge, in the revision. Secondly,

Mr. Patil strenuously submitted that, at best, the complainant may have a civil remedy against the accused. However, there is no element of criminality. It was submitted that the subject cheque was given by the complainant to accused No.1 in connection with an altogether different transaction. As disputes arose between the parties, the complainant filed a false complaint to wreak vengeance.

10. The learned APP and the learned Counsel for respondent No.2 countered the submissions on behalf of the petitioner. It was submitted that there was adequate material on record to form an opinion that there was sufficient ground to proceed against the accused and, therefore, the learned Magistrate cannot be said to have committed any error in issuing the process against the accused. Emphasis was laid on the fact that the encashment of the cheque by the accused is not put in contest. That by itself incriminates the accused.

11. I have carefully considered the submissions canvassed across the bar. The broad submission of Mr. Patil that the complainant may have a civil remedy does not merit acceptance unreservedly. It is well recognized that a same set of facts may give rise to both civil and criminal remedies. If there is an element of criminality in the transactions, the complaint cannot

be jettisoned away on the premise that the aggrieved party may resort to civil proceedings.

12. *Prima facie*, it appears that the learned Magistrate applied his mind to the allegations in the complaint, documents annexed with it and the report submitted by the police under Section 202 of the Code. The learned Magistrate has noted, *inter alia*, that immediately after the credit of the subsidy amount in the account of the complainant, on 23rd December, 2010, the accused Nos.1 and 2 presented the cheques drawn for Rs.5,00,000/- and Rs.5,75,000/-, respectively, for encashment and those cheques were honored. The learned Magistrate, it appears, had perused the statement of account of the complainant. In the report of enquiry submitted by the police, it was concluded that the investigation revealed the complicity of the accused.

13. The submission on behalf of the petitioner that the said cheque was drawn by the complainant in favour of the accused in connection with an altogether different transaction, is essentially a matter of defence. *Prima facie*, it does not appear any creditable material could be found in that regard, during the course of enquiry by the police under Section 202 of the Code. On the contrary, if the allegations in the complaint are

considered in the backdrop of the proximity of time between the credit of the subsidy in the account of the complainant and withdrawal of the amount by the accused and that too on the very same day, an inference becomes justifiable that there are sufficient grounds to proceed against the petitioner.

14. In the aforesaid view of the matter, the learned Magistrate did not commit any error in issuing the process against the complainant. The learned Additional Sessions Judge correctly exercised the discretion not to interfere with the order passed by the learned Magistrate. In exercise of extraordinary writ and inherent jurisdiction, this Court does not find any justifiable reason to interfere with the orders passed by the courts below. The petition is thus devoid of substance and, therefore, deserves to be dismissed.

15. Hence, the following order.

: O R D E R :

- (i) The petition stands dismissed.
- (ii) Rule discharged.

No costs.

[N. J. JAMADAR, J.]