IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 915 OF 2014

Shri Rodsing Pruthvising Chandana
(Rathod) Age 48, Occ:Business
R/o. Kolad) Ambewadi Khamb,
Tal.Roha, Dist:Raigad .. Petitioner

Versus

1) The State of Maharashtra
(Samarth Police Station, Pune)
C.R.No. 24/2014

2) Rajkumar Jethanand Vadhwani
Age 60 years, Occ.:Business
R/o. 11/207, Meera Society,
Shankar Sheth Road, Pune .. Respondents

Mr. Vikas B.Shivarkar, for the Appellant.
Mr. Shrikant V. Gavand, APP for the Respondent No.1-State.
Mr.Sarang S.Aradhye a/w. Ms. Gauri Velankar, a/w. Shantanu Gurav, a/w. Shruti Kothavade a/w. Mr.Sarth Charodia for Respondent No.2.

CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.
DATE : 6th FEBRUARY, 2024.

<u>JUDGMENT [PER: SHYAM C. CHANDAK, J.]</u>

1) Present Petition is filed under Article 226 of Constitution of India read with Section 482 of the Criminal Procedure Code for quashing of F.I.R. bearing No.24/2014, dated 4th February 2014, registered with Samarth Police Station, Pune for the offences punishable under Section 420 of the Indian Penal Code ('I.P.C.' for short).

2) Heard Mr. Vikas Shivarkar, learned Advocate for the Petitioner, Mr. S.V. Gavand, learned APP for the Respondent No.1-State and Mr.Sarang Aradhye for Respondent No.2. Perused the record.

3) Record indicates that, by an Order dated 3rd September 2014, notice was issued to Respondent Nos.1 and 2 and it was directed that charge-sheet shall not be filed till the next date. The said Order is in force till today. Rule. Rule made returnable forthwith.

4) The impugned F.I.R. came to be registered on the report dated 4th February 2014, lodged by Respondent No.2, wherein he has stated that, he is dealing in Edible Oil business in the partnership, at Nanapeth, Pune under the name and style as M/s. Kungumal and Sons. On 4th August 2012, the Petitioner approached him and convinced that, he is a businessman. Then, the Petitioner purchased 50 tins of Edible Oil worth Rs.47,329/- and

gave a cheque as security with a promise that, he would send the aforesaid amount lateron. On 9th August 2012 the Petitioner paid the said amount and again purchased the Oil worth Rs.92,400/- which amount he paid on 13th August 2013 (correct date may be 13th August 2012). On same day the Petitioner purchased the Oil worth Rs.1,48,751/- and paid Rs.1,00,000/- for the said goods on 18th August 2012, by RTGS.

4.1) Thereafter the Petitioner convinced the Respondent No.2 to transact *via* RTGS giving pretext that, it is difficult for him to come to Pune for the purchase and payment. The Respondent No.2 having found the Petitioner trustworthy agreed for that. Thereafter whenever the Respondent No.2 was supplying the goods, immediately the Petitioner was paying its price by RTGS. This convinced the Respondent No.2 that the Petitioner is a good businessman.

4.2) That between 22nd January 2013 to 25th February 2013, the Petitioner purchased the Oil worth Rs.33,73,904/- in the name of his firm, in the name of his brother's company and in the name of his nephew's firm *viz*. R.P. Traders. Out of that amount, the Petitioner paid Rs.7,69,500/- only. Thereafter, the Respondent No.2 repeatedly demanded the balance amount of Rs.27,04,404/- from the Petitioner, however he avoided to pay the same. Meanwhile, the Respondent No.2 telephoned the Petitioner on 3rd February 2013 (correct date may be 3rd February 2014) and demanded the balance amount. At that time, the Petitioner replied that the *VAT* Authority people have raided his shop on 1st February 2013 and sealed his Bank Accounts. Therefore, he is unable to pay the amount. Thus, the Respondent No.2 convinced that, the Petitioner has cheated him. Therefore, he lodged the report and the abovesaid crime came to be registered.

5) Learned Advocate for the Petitioner submitted that, the dispute between the parties is completely civil in nature. Just because the Petitioner could not pay the price of the goods purchased by him on credit, the offence of Section 420 cannot be attracted against the Petitioner. There was no *mens rea* on the part of the Petitioner to attract the offence under Section 420 of the I.P.C. The Petitioner is a reputed businessman, however present F.I.R. is filed just to humiliate him. As such the impugned F.I.R. is illegal and its continuation would be abuse of process of law. Hence said F.I.R. may be quashed.

6) In contrast, learned APP submitted that, after winning the trust and confidence of the Respondent No.2, the Petitioner purchased the

Oil of huge quantity, however he paid him very less amount. Thereafter taking false ground of raid by *VAT* Authority, the Petitioner avoided to pay the balance amount to the Respondent No.2. Thus, this is a well planned case of cheating. Hence, there is no substance in the Petition. Learned Advocate for the Respondent No.2 concurred with the above submissions.

7) Looking at the rival submissions, we have carefully scrutinized the F.I.R. On such a scrutiny we found that, initially the Petitioner was very regular in paying the price of the goods. Thus the Petitioner gained trust of the Respondent No.2. Therefore the Respondent No.2 agreed to sale the goods in large quantity and also in the name of the firms/companies of the relatives of the Petitioner. Then within a very short time the Petitioner purchased huge quantity of the Oil. It is evident that, the goods which the Petitioner purchased in the name of his relatives firms/companies was of considerable price. However on those occasions he paid very less amount and did not pay the balance amount of Rs.27,04,404/-. No document is produced by the Petitioner to show that, there was a raid at his shop and sealing of his Bank Accounts by the *VAT* authority people.

8) From the abovesaid circumstances, it is crystal clear that since beginning the Petitioner had intention to cheat the Respondent No.2.

Therefore he initially gained the confidence and trust of the Respondent No.2 by paying the price of goods regularly and on time. However, the moment huge amount was balance and payable on his part, the Petitioner immediately avoided to pay the same giving a false pretext of raid at his shop by the *VAT* Authority and sealing of his bank accounts. Thus, this is clear case of cheating by deceiving the Respondent No.2 and dishonestly inducing him to deliver the goods/Oil in huge quantity to the Petitioner but without any intention to pay its price and to gain wrongfully to himself.

9) In view thereof, we do not find any substance and force in the submissions canvassed across the bar on behalf of the Petitioner. As a result, the Petition is liable to be dismissed and is accordingly dismissed.

(SHYAM C. CHANDAK, J.) **(A. S. GADKARI, J.)**