IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.974 OF 2017

Ms. Kalpana Springwala
201, Gambhir Industrial Estate,
Goregaon (E),
Mumbai – 400 063 .. Petitioner

vs.

1. State of Maharashtra
At the instance Bhandup
Police Station ..

2. Mr. Balakrishna K. Nair
Residing at Room No.1,
Rambhuvan Society,
Konkan Nagar, Bhandup (W),
Mumbai 400 078 .. Respondents

Mr. Shine Kamaluddin Mohammad i/b MZM Legal for the Petitioner.
Mr. J. P. Yagnik APP for the Respondent-State.
Mr. Sameer P. Nangre for the Respondent No.2.

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

RESERVED ON : 8th MARCH 2024
PRONOUNCED ON : 7th MAY 2024

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

1) The Petitioner-accused in C.C.No.43/PW/2017, registered for the offences punishable under Sections 406, 420, 465, 467 and 506 of the Indian Penal Code ('*I.P.C.*', for short), pending on the file of the learned Metropolitan Magistrate, 53rd Court, Mulund, Mumbai, has preferred this

Petition under Article 226 of the Constitution of India, seeking for quashing of MECR No.5 of 2016 and said C.C.No.43/PW/2017, arose out of the said M.E.C.R.

2) Heard Mr.S.K. Mohammad, learned Advocate for the Petitioner, Mr.Yagnik, learned A.P.P. for the Respondent No.-State and Mr.Nangre, learned Advocate for the Respondent No.2.

3) Record indicates that, Rule is issued on 28th September 2017, and the proceedings in the said C.C.No.97/SW/2016 were stayed.

4) Facts giving rise to this Petition are as under :

4.1) That, initially, Respondent No.2 had filed C.C.No.97/SW/2016 under Section 156(3) of the Code of Criminal Procedure ('*Cr.P.C.*', for short), for the offences punishable under Sections 406, 420, 465, 467 and 506 of the I.P.C., wherein he narrated that, he is proprietor of M/s. A & A Clothing and M/s. Oasis Apparels, and doing a business of manufacturing ready made garments. The Petitioner is proprietor of M/s.V. R. Invogue.

4.2) In the year 2009, the Petitioner represented the Respondent No.2 that, she has been in the business of exporting clothing and garments. Further, she requested the Respondent No.2 to do a business with her giving allurement of good profit therefrom. Respondent No.2 accepted the said representation and agreed to do the business. According to the business arrangement between them, the Petitioner was to supply fabrics to

Respondent No.2 and latter was to stitch those fabrics into finished goods and supply the same to the Petitioner. Considering the nature of business, the Respondent No.2 had to engage labours and sub-contractors to enable his firm to supply the stitched garments at pre-decided rates.

4.3) Respondent No.2 alleged that, after supply of stitched fabrics he raised invoices in the name of M/s. V. R. Invogue. However, as per the practice followed by Respondent No.2, before the stitched garments/fabrics were supplied to the firm of the Petitioner, her employees namely Ms.Roopali Parab, designated as 'merchandiser' and Mrs. Sudhakar Vasu, designated as 'Quality Checker', used to check the quality and quantity of the stitched material and only after the approval of the goods, the invoices were raised to the Petitioner after the goods were supplied to her firm. In turn, the Petitioner used to export the said goods outside Mumbai, through shipment.

4.4) It is alleged that, at one point of time, when Respondent No.2 supplied the stitched goods to Petitioner and raised invoices for Rs.25,00,000/- against her firm M/s. V. R. Invogue, the Petitioner issued certain debit notes 7-8 months thereafter and reduced the amounts claimed in the said invoices, by giving a false reason of shipment/disaster/fabric shortage/short quantity. Therefore, the Respondent No.2 repeatedly requested the Petitioner to give the details of the said shipment disaster and details for other kinds of debit notes. However, the Petitioner did not divulge the details of the company through which the goods were shipped and how, the disaster of shipment happened. It is stated that, since the goods were loaded from the complainant's office but only after its check for quantity and quality by the aforesaid employees of the Petitioner, question of supplying less goods was not there. However, the Petitioner avoided to pay the said amount of Rs.25,00,000/- by giving false pretext. She also avoided to receive the phone calls of Respondent No.2. Once when the Respondent No.2 met the Petitioner and requested for clearing the invoices, the latter threatened to book him in a false case of molestation. Thus, being cheated for the goods supplied and the goods being misappropriated, the Respondent No.2 lodged a report against the Petitioner with Bhandup Police Station, Mumbai on 20th June 2016. However, police did not take its cognizance. Hence, Respondent No.2 filed the said C.C.No.97/SW/2016.

5) After considering the complaint and the documents enclosed therewith, the learned Metropolitan Magistrate directed the police to investigate into matter under Section 156(3) of Cr.P.C. and submit a report. Consequently, M.E.C.R. bearing No.5 of 2016 was registered with Bhandup Police Station, Mumbai. On completion of investigation, police filed the charge-sheet against the Petitioner stating that, between 1st April 2013 to 30th June 2014, the Petitioner procured stitched fabric/garments from the

Respondent No.2 but raising false claim that, the goods were of inferior quality and less in quantity, the Petitioner sent false debit notes to Respondent No.2 and thus misappropriate the balance invoice amount of Rs.23,34,007/-. Said charge sheet was registered as C.C.No.43/PW/2017.

6) Mr. S. K. Mohammad, learned Advocate for the Petitioner submitted that, the transaction in question was purely of civil nature. There are no ingredients of the offences punishable under Sections 406, 420, 465, 467 and 506 of the I.P.C. There is no evidence as to how the debit notes are false and fabricated. The allegation as to the offence under Section 506 are vague. Since the transactions were of civil nature, initially, Vanrai Police Station, Mumbai closed the complaint. However, suppressing this fact, the Respondent No.2 filed a report with Bhandup Police Station, Mumbai. Said report was also not entertained for the same reason. Yet the Respondent No.2 filed an Application under Section 156(3) of the Cr.P.C.

6.1) It is submitted that, in fact, Ms.Rupali Parab, the said employee of the Petitioner was behind the misappropriation of the goods, therefore, the Petitioner filed F.I.R.No.197 of 2014 under Section 420 and 408 of the I.P.C. against Rupali Parab with Vanrai Police Station, Mumbai. A couple of employees of the Respondent No.2 were also involved in the said illegal act. Thus, the Petitioner is innocent. Therefore, the impugned M.E.C.R. No.5 of 2016 and the consequent C.C.No.43/PW/2017 are liable to be quashed and set aside.

7) Per contra, Mr.Nangre, learned Advocate for the Respondent No.2 submitted that, said goods were received by the Petitioner's company only after her employees checked it for quality and quantity. As per the statement of Roopali Parab and Sudhakar Vasu, the Petitioner's husband used to check the goods before the shipment. Therefore, question of receiving goods of inferior quality and lesser in quantity does not arise. The audit reports on record clearly shows that there are discrepancies in the accounts and invoice details submitted by the Petitioner with the auditors concerned. In fact, the auditors' report confirmed that, this is a clear case of cheating and misappropriation. Therefore, the Petition may be dismissed.

8) From the rival submissions and investigation material it is apparent that, the Petitioner came in contact of the Respondent No.2 sometime in the year 2009-10. Thereafter, the parties entered into business transactions as alleged in the complaint. Initially, the Petitioner impressed upon the Respondent No.2 that she is a seasoned business woman and can be trusted easily. After gaining confidence of the Respondent No.2, the Petitioner caused him to stitch fabrics and supply the finished garments as per the Orders received. In turn, the Petitioner was paying to the Respondent No.2 towards finished goods. However, all of sudden the Petitioner gave the subject debit notes. Yet, it is not clarified in the debit

notes as to who and when checked the good for quality and quantity, how the goods were of inferior quality and why the quantity of goods was less.

9) It is material to note that, during investigation, Mr. Gajanan Mestry, audited the ledger accounts of M/s.A & A Clothing for the financial year 2013-14 and 2014-15 and of M/s.Oasis Apparels for the same period. The auditor found that, total Rs.22,90,610/- are outstanding due and payable to the said firms by the Petitioner. Subsequently, Mr.Sunil Seth Nayak audited the ledger accounts supplied by the aforesaid firms and the Petitioner for the same financial years and submitted his report. This subsequent auditor's report shows that, Rs.8,13,160/- and Rs.10,76,957/- are respectively receivable to M/s.A & A Clothing and M/s.Oasis Apparels from M/s.V. R. Invogue. Thus, the auditors' reports confirms the allegations against the Petitioner.

10) Even though, the Petitioner has filed the F.I.R. against her employee Rupali Parab, her statement recorded by the police in this crime shows that, the delivery of the goods was accepted by the firm of Petitioner, only after it was checked and stamped. Further, the goods was taken out for shipment only after it was checked and signed by the husband of the Petitioner. Therefore, there was no question of inferior quality and lesser quantity of the goods in question. However, the Petitioner filed a false F.I.R. against her.

11) In view thereof, we are of the opinion that, there is *prima facie* case against the Petitioner of the offences stated above. Thus, there is no substance in the Petition and the Petition is liable to be dismissed.

11.1) Petition is accordingly dismissed.

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