

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1960 OF 2016

Hatim Glazing & Cladding Pvt. Ltd.

...Petitioner

Versus

1. State of Maharashtra and Ors.

...Respondents

....

Mr. Mikdad Aziz Zumnerwala, Advocate for the Petitioner.

Mr. Shreeram Shirsat, Special P.P. a/w Karishma Rajesh, Tanvi Mate,
Shekhar Mane Mr. Tanveer Khan Advocate for Respondents.

Mr. Arfan Sait, APP for Respondent-State.

....

CORAM : PRAKASH D. NAIK, J.

DATE : 1st FEBRUARY 2024

P.C.:-

1. The Petitioner has invoked powers under Article 227 of the Constitution of India and Section 482 of Cr.P.C. challenging the order dated 18th March 2016 passed by learned Additional Sessions Judge, Greater Bombay in Criminal Revision Application No.1258 of 2015 rejecting the Revision Application preferred by petitioner.

2. The petitioner is the original complainant in C.C. No. 317/SW/2013. The learned Magistrate vide order dated 1st September 2015 dismissed the complaint under Section 203 of Cr.P.C.

3. Order dated 1st September 2015 was challenged by the petitioner before the Sessions Court by preferring Criminal Revision Application No. 1258 of 2015. The Revision Application was rejected vide order dated 18th March 2016.

4. The case of the complainant is in nutshell is as under:-

It was agreed between complainant and accused Nos. 1 to 4 that, they would carry out glazing and cladding work with total contract amount of Rs.60,701,649.00/- at the MSR Regaliaa Elements Mall, Bangalore. Initially, the said work was carried out by M/s.Modi Glazing & Cladding Pvt. Ltd. The work was transferred to the complainant. The entire pending account of the M/s.Modi Glazing and Cladding Pvt. Ltd. was transferred to complainant. The complainant invested huge amount of money to purchase raw material, equipments, hiring labour, expertise etc. and all that is necessary as it was a big project. The complainant appointed accused No.6 to undertake the work of supervision. Accused No.7 was appointed as labour contractor at the site and supervise the work done by them. The equipments/materials purchased were entrusted and kept under the custody and supervision of the accused Nos. 6 and 7. The said accused were acting in connivance with accused No.1 to 4. The accused No.6 and 7 did not co-operate and avoided the work by conspiring with the accused

Nos. 1 to 4. The accused Nos.6 and 7 were taken over by accused No.1 to 4. The amount claimed by them from accused Nos. 1 to 4 used to go through approval of accused No.5. The accused No.1 to 4 released part payment despite providing them purchase records. False promise were given to induce the complainant to carry out work without making full payment. The complainant addressed e-mail to accused No.5 informing them about due payment towards VAT. The accused Nos. 1 to 4 were adamant in not releasing the payment. On 14th September 2013 after withholding and delaying payments towards service taxes, the accused No.6 and 7 handed over the material worth Rs.55,16,050/- to accused No.1 to 5. There were huge outstanding amount of Rs.1,49,08,155/- to be cleared by the accused Nos.1 to 4. The accused kept on making perverse issue instead of clearing the due payments. Complaint was made to Senior Inspector of Police, Byculla Police Station.

3. Learned Magistrate vide order dated 28th October 2013 rejected the prayer for sending the complaint for investigation under Section 156(3) of Cr.P.C. on the ground that, looking to the facts of complaint and nature of transactions. No case is made out for sending the complaint for investigation under Section 156(3) of Cr.P.C. It was directed that, the complaint to be put up for recording verification statement. The verification statement was recorded on 2nd January 2014. Vide order dated

2nd January 2014, the inquiry report under Section 202 of Cr.P.C. was called from Byculla Police Station.

4. The police submitted the report dated 2nd January 2014 before the Court of learned Magistrate and opined that, dispute is purely of civil nature based on commercial dispute and there is no element of violation of penal law.

5. Notice was issued to the complainant calling for his say. Complaint was dismissed under Section 203 of Cr.P.C. The Revision Application challenging the order of learned Magistrate was also rejected.

6. Learned Advocate for the petitioner submitted that, there was no civil dispute pending between the parties. The Investigating Agency, learned Magistrate and the learned Sessions Judge have committed an error. The Courts were under impression that the civil proceedings are pending between the parties. Prima facie offences were made out. The complaint ought not to have been dismissed. The complaint and verification statement makes out the offences alleged against the accused. The complaint was dismissed at pre-mature stage. The order are contrary to law.

7. Learned Advocate for respondents submitted that, there is no

infirmity in the impugned orders. Complaint was rightly dismissed by the learned Magistrate. The complainant is trying to get purely civil commercial dispute converted into criminal offence. The dispute is commercial in nature. The respondent No.2 had engaged services of Noorudin A. Modi, the Director of Petitioner company for carrying out glazing, cladding, facading etc. Work order dated 23rd May 2012 was issued to M/s. Modi Glazing and Cladding Co. Pvt. Ltd. a sister concern of the petitioner and company of Mr.Noorudin A. Modi for carrying out the glazing and cladding work in the project for contract amount of Rs.6,07,01,649.00/-. Clause 12 of the work order dated 23rd May 2012 stipulates that, the company would complete the work of glazing and cladding on or before 30th July 2012 and in case of delay penalty would be inflicted on the said company. By letter dated 15th January 2013, Mr. Noorudin Modi informed the respondent No.2 that due to internal conflicts M/s. Modi Glazing and Cladding Pvt. Ltd. would not be able to continue and complete the work. The petitioner's company acknowledged that, they have received an amount of Rs.1,34,00,000/-. The petitioner demanded payment from respondent No.2 in order to continue the work of project. However, the petitioner did not issue any bills for the amount of Rs.1.2 crores. The petitioner directed the work to stop the work at the site and demanded Rs. 1 crore from respondents. The project consultant asked the petitioner to re-start the work. Timely payments were made to the

petitioner. It was the duty of the petitioner to furnish material, labour, equipments etc in order to complete the work. The respondents paid money to other suppliers. Meeting was held on 28th January 2014 to settle the dispute. Consultant submitted report about total work done on the site. The petitioner abundant the work and the respondents were compelled to engage new contractor. No case is made out to interfere in the impugned orders.

8. From the contents of the complaint, verification statement and the police report it is evident that the dispute is purely of civil nature. The facts of the case does not warrant interference in the impugned orders. The dispute has surfaced in business transaction and it is rightly observed by the learned Magistrate that attempt is made to give it colour of criminal case. There is no sufficient ground for proceeding against the accused. The report under Section 202 of Cr.P.C. indicate that dispute is purely of civil nature. The facts of case does not constitute the offence of cheating or criminal breach of trust. The allegations are based on contractual relationship. There was agreement between the parties which goes to show that the complainant had agreed to complete the work allotted by respondent No.2 to 5 to it on or before 20th September 2012 and to pay penalty if the work is not completed. The complainant failed to complete the work up to 14th September 2013. Learned Sessions Judge has observed that, it is for the

complainant to approach civil Court for remedy. The record shows that the respondent No.2 to 5 made payments of the work done by the complainant. It is not case of the complainant that since inception the respondent No.2 to 5 were not paying the amount of work done by it. The ingredients of Sections 403, 406, 408, 409, 420 and 426 of the Indian Penal Code, 1860 are lacking. The complainant has to show that, since inception the intention of the accused persons was to defraud him. There was no material to issue process for the offences. On receipt of the report, the learned Magistrate recorded verification statement and thereafter, dismissed the complaint on the ground that the dispute is of civil nature.

9. There is no reason to interfere in the impugned orders passed by the Courts below. The petition is therefore, required to be dismissed.

ORDER

Criminal Writ Petition No. 1960 of 2016 is dismissed and disposed off.

(PRAKASH D. NAIK, J.)