IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.798 OF 2022

Mrs.Rupa Sayta, Age 61 years,
Occ.House Wife, R/o.98, Dariya Mahal-B,
80, Nepean Sea Road, Mumbai-400 006. Applicant
versus
1. The State of Maharashtra
2. Mrs.Shakuntala R. Kapadia,
3. Ramesh H. Kapadia,
Respondent nos.2 and 3 R/o.Flat No.11,
Arti Building, Opp.Tardeo AC Market,
Mumbai-400 034. Respondents

Mrr.Bhavesh Thakur with Mr.Murtaza Kachwalla, Aashdin Chivalwala and Shreyas Lavekar i/by Argus Partners for Applicant.

Mr.Rajesh L Dharap, Advocate for Respondent nos.2 and 3.

Mr.Arfan Sait, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 18th January 2024

PC :

1. Applicant is aggrieved by order dated 17th February 2020 passed by learned Metropolitan Magistrate, 37th Court, Bandra, Mumbai in CC No.231/SW/2016 to the extent of not issuing process for offences under Sections 406, 409, 420, 467, 468, 471 r/w 120B of Indian Penal Code and the order passed by Sessions Court dated 13th January 2022 dismissing Revision Application No.413 of 2020 preferred by Applicant.

2. Applicant is the original complainant in CC No.231/SW/2016. Whereas Respondent nos.2 and 3 are original accused nos.1 and 2.

3. The complainant had alleged that accused no.1 is her sister. Accused no.2 is sister's husband and accused nos.3 and 4 are sister's sons. In the year 1980 accused no.1 and complainant had formed partnership firm by name and style `K.S.Industries'. Accused did not allow the complainant to manage and participate in the day to day affairs of business and in good faith permitted accused no.1 to manage the day to day affairs of said partnership firm. Accused nos.1 and 2 were responsible for management of day to day affairs of firm and over the time accused nos.3 and 4 also took on such responsibility. The accused did not disclose statements of accounts to the complainant nor did they pay any remuneration or any return on capital which complainant invested. The complainant was repeatedly assured by her mother that she would ensure that all the accused would provide the complainant rightful accounts and lawful dues in respect of firm. Owing to her mother's wishes, complainant did not resort to legal actions in respect of accurate accounts of firm until death of her mother. After death of mother in 2015 complainant filed an application through RTI on 6th January 2016 to Registrar of Partnership Firms, when it was revealed that in the year 1986 the accused nos.1 and 2 without consent of complainant dissolved the firm by forging her signature. Accused cheated her by not providing any amount and any return on capital investment. Accused committed offence of forgery, cheating, criminal breach of trust and criminal misappropriation.

4. Complainant by filing private complaint had sought investigation u/s.156(3) of Cr.P.C. However, learned Magistrate had apparently directed inquiry u/s.202 of Cr.P.C. Report was submitted by concerned Police Station. Pursuant to the report learned Magistrate issued process against accused u/s.465 of IPC and

complaint as against accused nos.3 and 4 was dismissed.

5. Being aggrieved by the said order complainant preferred Revision Application No.413 of 2020 before the Court of Sessions. Said Revision Application has been dismissed vide order dated 13th January 2022.

6. Learned advocate for Applicant submitted that the Magistrate had committed an error in not issuing process for other offences which were clearly made out in the complaint filed by Petitioner and supported by documents. At the stage of issuance of process the Court was required to see whether prima facie case was made out. However, the learned Magistrate was satisfied that accused had forged the signature of complainant and therefore issued process against accused nos.1 and 2 u/s.465 of IPC. However, although averments in the complaint shows that accused had committed offence of forgery for the purpose of cheating, Magistrate did not take cognizance of other offences against other accused. There was sufficient material before the Magistrate against the accused for various other offences urged in the complaint. The Magistrate had erroneously observed that except forgery of signature, no other offence was made out. When partnership firm was registered in the year 1980, the complaint never made any complaint for 20 years, without giving any particulars of what capital she had invested, what source she had for investments, why she did not claim any share in profits, makes the complaint unfounded. This is not the stage to conduct roving inquiry. An opportunity may be given to the complainant to lead evidence and call upon the parties to lead documentary evidence. However, at the stage of process learned Magistrate ought not to have dismissed the complaint, except to

other offences.

7. Advocate for Respondent nos.1 and 2 submitted that complainant was aged around 18 years at the time of execution of partnership deed. The Magistrate has therefore rightly observed that there was no disclosure in the complaint as to what capital was invested by her. The complaint was vague and there was no evidence to prove offences of cheating, misrepresentation, criminal breach of trust, misappropriation etc.. Civil Suit is pending before concerned Court. Police report was submitted pursuant to investigation u/s.202 of Cr.P.C which does not support claim of complainant. The Magistrate has rightly observed that for want of any material process cannot be issued for other offences. The said order was challenged in revision and the Sessions Court dismissed the revision application.

8. Perused the complaint and other documents including impugned orders passed by both the Courts below. The complainant and the accused are relatives. Apparently partnership firm was registered in the year 1980 and dissolved in the year 1986. The complaint was filed after a period of 20 years. Learned Magistrate issued process for the offence u/s.465 of IPC. It was observed that without giving any particulars of what capital the complainant had invested; what source she had for investments; why she did not claim any share in profits; makes the complaint unfounded. Complainant has failed to show any accounts to claim any losses. The revision application preferred before Sessions Court by complainant challenging order passed by Magistrate, has been dismissed by assigning cogent reasons. The Sessions Judge observed that no interference is called for in the impugned order passed by

learned Magistrate. The Sessions Court perused the report submitted u/s.202 of Cr.P.C by police and complaint filed by complainant which alleges commission of offences of misappropriation of funds, cheating, breach of trust etc.. Though the complainant pleaded that she was cheated for at least Rs.18 crores, fact remains that not a single document is on record to show that the complainant has deposited any amount towards capital of that company/firm. No document shows what was the income of that firm and that money was siphoned off as claimed by complainant. It was for the complainant to prima facie establish her claim on record that has not been done. Therefore the Metropolitan Magistrate has rightly not issued process for offences punishable for misrepresentation, cheating, criminal breach of trust and misappropriation of fund.

9. Considering the documents on record and reasons recorded by both the Courts below, I do not find any reason to deviate from the view taken by both the Courts below. Both the orders below are well reasoned.

ORDER

(i) Criminal Application No.798 of 2022 is rejected;

(ii) It is clarified that observations made in this order are for considering the issues involved in this application.

(PRAKASH D. NAIK, J.)

MST