IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2473 OF 2024

Vishnu Pandurang Dalvi,
Age 49 years, Occ.:Business,
Indian Inhabitant, Residing at Plot No. 12,
Flat No. 1903, 19^{th} Floor, "A" Wing,
Alhana-A, Majiwade, Althana "A",
Rustomjee, Urbania, Satara Highway,
Near Lodha Complex, Thane-400 601. .....Petitioner

Vs.

1. The State of Maharashtra
through the Public Prosecutor,
High Court (A.S.), Bombay,
at the instance of Senior Inspector
of Police, Kapurbaudi P. S.,
Dist.-Thane (now transferred to EOW,
Thane and registered as C.R. No. 15 of 2024).

2. Nitin Uttamrao Patil,
Aged 53 years, Occ.:Business,
Chairman of "M/s. Gadag Mines & Minerals
Pvt. Ltd." having address at 1507-C,
Ford Corner, Bhoopal Tower, 1^{st} Floor,
Laxmipuri, Kolhapur-416 002.

And

Residing at R.S. No. 36/A/26E,
Atharv Siddhi Bungalow No. C/2,
Tarabai Park, Kolhapur-416 003. .....Respondents

Mr. Zaid Qureshi a/w Mr. Akkshay Mishra i/b Hulyalkar & Associates for the Petitioner.
Smt. Anamika Malhotra, Addl.P.P. for Respondent No. 1-State.

CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.
RESERVED ON : 21st JUNE 2024
PRONOUNCED ON : 28th JUNE 2024

JUDGMENT (*Per Dr. Neela Gokhale, J.*) :-

1) The Petitioner seeks quashing of the First Information Report (“F.I.R.”) bearing C.R. No. 416 of 2024 registered with the Kapurbaudi Police Station, District Thane, now transferred to the Economic Offenses Wing (“E.O.W.”) filed by the Respondent No. 2 herein (“Complainant”) against the Petitioner and 4 others for offenses punishable under Sections 420, 406 read with 120B of the Indian Penal Code, 1860 (“I.P.C.”).

2) Mr. Zaid Qureshi, learned counsel appears for the Petitioner and Smt. Anamika Malhotra, learned APP represent the State.

3) It is the case of the Complainant that he is a director in the Company viz. M/s. Gadag Mines and Minerals Pvt. Ltd. Mr. Nishant Raut is the other director. The Company was desirous of procuring sand containing minerals from various sources. In the year 2023, one Shri. Ramesh Gunani shared information with the complainant regarding the M/s. Landmark Mining & Logistic Company, being run by the Petitioner and few other persons. The company of Shri. Gunani being “Sahyadri Resources Pvt. Ltd.” had 50% share in the Landmark Mining Company and the remaining 50% belonged to Mr. Jayprakash and Mr. Rajendra Rane, the close relatives of the Petitioner. It is the say of the Complainant that the Petitioner is

implicated in many criminal cases and hence he has inducted his close relatives as partners in Landmark Mining Company to conduct the affairs of firm instead of doing so in his own name. The Complainant further alleges that various meetings between himself representing his Company and the Petitioner along with other accused took place to discuss business propositions. One such meeting took place in a hotel "VihanWin" at Thane. The Petitioner and his other associates of Landmark Mining agreed to purchase 5,25,000 MT of mineral sand in consideration of an amount of Rs. 13.33 crores to be paid to Landmark Mining Co and its nominees. The agreement was reduced into writing vide a document styled as 'Agreement for Sale of Iron Ore' on 30th November 2023. The agreement was executed by the Complainant on behalf of his Company and by Mr. Jaiprakash and Mr. Rajendra Rane on behalf of Landmark Mining Company. The Petitioner herein along with other accused namely Mohan Kalgutkar and Prakash Mohite put their signatures as witnesses to the agreement. Accordingly at the instance of the Petitioner herein, the Complainant transferred a total amount of Rs. 6,42,00,000/- in the Bank Account of Landmark Mining in the Bank of India, Laxmipuri Branch, Kolhapur in various installments. It is stated by the Complainant that his Company performed its part of the obligations recorded in the agreement. On the contrary in January 2024, Landmark Mining Company gave only 65,000 MT sand with mineral. Another meeting was organized by the Complainant. The Petitioner attended the meeting and gave assurance regarding supply of the agreed quantity of sand but failed to do so. The Complainant then made enquiries and was shocked to learn that the Petitioner and others were supplying the material to third parties, instead of acting in aid of their agreement. The Complainant has furnished a list of such persons. He also learned that Landmark Mining Company was permitted by the Government authorities to only extract 2,23,000 MT of sand. Despite this, the Petitioner and others had agreed to supply 5,25,000 MT of sand to the Complainant's Company. It is thus the allegation of the Complainant that his company has paid an amount of Rs. 6,42,00,000/- to Landmark Mining Company and its nominees in lieu of which only 4,60,000 MT sand was received from them. Thus, the Petitioner and other accused have committed the offense of cheating the Complainant and his Company of approx. Rs. 92.422 Crores.

4) Mr. Qureshi contended that, a false case has been foisted upon the Petitioner with the sole object of pressurizing him and the other accused to settle dispute with the Complainant and his Company. He further says that the dispute is completely of a civil nature and is only being given the color of a criminal offense to pressurize the accused. He also points to the Agreement for Sale dated 30th November 2023 to contend that the Petitioner herein is not even a party to the agreement but has merely signed as a witness to the same and hence he cannot be roped in the crime. Mr. Qureshi has cited various judgments of the Hon'ble Supreme Court and

other High Courts to buttress his case that, allegations of civil nature cannot amount to cheating and justify quashing of the F.I.R. He thus urges us to allow the petition and quash the F.I.R.

5) Smt. Malhotra, learned APP has drawn our attention to various orders of this Court which clearly indicate the involvement of the Petitioner in multiple crimes of similar nature involving the offense of cheating, to name a few, C.R. No. 447 of 2019 registered with Vashi Police Station for offenses punishable under Section 420 read with 34 of the I.P.C. and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) ("M.P.I.D.") Act, 1999; C.R. No. 219 of 2020 registered with Karad City Police Station for the offenses punishable under Sections 406, 409 and 420 read with 34 of the I.P.C. and Section 3 of the M.P.I.D. Act and C.R. No. 34 of 2020 registered with Deola Police Station, Nashik for offense punishable under Sections 409, 406 and 420 and 120B read with 34 of the I.P.C. and Sections 3 and 4 of the M.P.I.D. Act. Smt. Malhotra also says that the investigation is in progress and despite calling upon the Petitioner to join investigation he has repeatedly avoided the same. She also states that *prima-facie* investigation has revealed commission of the offense by the Petitioner and others.

6) We have heard the counsels and perused the record with their assistance. A plain reading of the F.I.R. attributes a clear role of the Petitioner in the alleged offense. Even though he claims to have put his

signature on the agreement merely as a witness, the allegations in the F.I.R. are not based only on breach of the agreement. It is discerned from the F.I.R. that the various meetings were attended by the Petitioner and the other accused as representatives of Landmark Mining Company who have induced the Complainant to pay an amount of Rs. 6,42,00,00/- to Landmark Mining Company and its nominees. Despite having received the money, the Petitioner and others failed to provide the agreed 5,25,000 MT of sand. There is a specific averment in the F.I.R. that Landmark Mining and Company had license to extract only 2,23,000 MT of sand. On the face of the F.I.R., it appears that the Petitioner and others have clearly deceived the Complainant and his Company and has fraudulently and/or dishonestly induced them to part with huge amounts of money. Merely because the Petitioner is not depicted as the 'Seller' for Landmark Mining and Logistics but as a witness cannot by itself negate his role in inducing the Complainant to part with such a huge sum by deception as they never had a license to extract the quantity of promised sand in any case. We thus have no hesitation in holding that from the bare averments in the F.I.R. the role of the Petitioner in commission of alleged offense cannot be denied at this stage and a *prima-facie* case against him is made out.

7) The Hon'ble Supreme Court in the case of *Professor R. K. Vijaysarthi and Anr. Vs. Sudha Seetharam and Another*[1] has culled out the

1. [(2019)16 SCC 739].

ingredients to constitute the offense under Sections 415 and 420 of the I.P.C. as under :

> "*15. Section 415 of the Penal Code reads thus :*
>
> *"**415. Cheating**.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."*
>
> *16. The ingredients to constitute an offense of cheating are as follows :*
>
> *16.1. There should be fraudulent or dishonest inducement of a person by deceiving him :*
>
> *16.1.1. The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property or*
>
> *16.1.2. The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived and*
>
> *16.2. In cases covered by 16.1.2. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.*
>
> *17. A fraudulent or dishonest inducement is an essential ingredient of the offense. A person who dishonestly induces*

another person to deliver any property is liable for the offense of cheating.

18. Section 420 of the Penal Code reads thus :

*"**420. Cheating and dishonestly inducing delivery of property**.—*

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

19. The ingredients to constitute an offense under Section 420 are as follows :

19.1. A person must commit the offense of cheating under Section 415 and

19.2. The person cheated must be dishonestly induced to

(a) deliver property to any person or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

20. Cheating is an essential ingredient for an act to constitute an offense under Section 420."

8) A similar view has been taken in the cases of *Archana Rana v. State of Uttar Pradesh and Another*[2], *Deepak Gaba and Others v. State of*

2. (2021)3 SCC 751.

Uttar Pradesh and Another[3] and *Mariam Fasihuddin and Another v. State by Adugodi Police Station and Another*[4].

9) It can thus be seen that for attracting the provisions of Section 420 of the I.P.C., the F.I.R./complaint must show that the ingredients of Section 415 of the I.P.C. are made out and the person cheated must have been dishonestly induced to deliver the property to any person; or to make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. In other words, for attracting the provisions of Section 420 of the I.P.C., it must be shown that the F.I.R./ complaint discloses :

(i) the deception of any person;
(ii) fraudulently or dishonestly inducing that person to deliver any property to any person and
(iii) dishonest intention of the accused at the time of making the inducement.

10) At the cost of repetition, we observe that the contents in the F.I.R. clearly fulfill the ingredients of the offense of cheating *qua* the Petitioner. Furthermore the learned APP has also placed records indicating the involvement of the Petitioner in criminal cases involving similar offense. Although this argument fails to prejudice us in the determination of the present Petition, it does increase the probability of involvement of the Peti-

3. (2023)3 SCC 423.
4. 2024 SCC OnLine SC 58.

tioner in the present crime. A *prima-facie* case is made out more so ever when the Petitioner and others representing Landmark Mining Company were aware that the Company were licensed to extract limited quantity of sand and in any case not as much as they promised the Complainant and his Company.

11) In reference to the contention of the Petitioner that a dispute of civil nature is being coloured as a crime against him, we are aware of the clear distinction between a civil wrong in the form of a breach of contract, non-payment of money or disregard to and violation of contractual terms; and a criminal offense under Sections 420 and 406 of the I.P.C. The allegations in the present F.I.R. do not appear to be based only on the breach of the agreement but the role of the petitioner in inducing the Complainant to part with a huge sum of money on a fraudulent representation is independently and specifically stated in the F.I.R.

12) We also wish to clarify another important aspect of the present matter. The F.I.R. notes commission of alleged offenses punishable under Sections 420 and 406 read with 120B of the I.P.C. We are conscious of the settled legal position that the same act cannot result in an offense of 'cheating' and 'criminal breach of trust' simultaneously. For the offense of cheating, dishonest intention must exist at the inception of the transaction, whereas, in case of criminal breach of trust there must exist a relationship between the parties whereby one party entrusts another with the property

as per law, albeit dishonest intention comes later. However the matter is presently poised on the threshold of an investigation. Based upon the results of the investigation, it will be open for the State to take appropriate decision regarding the charges that are made against the petitioner and/or others or otherwise. In our jurisdiction under Article 226 of the Constitution of India, we are not expected to conduct a mini-trial.

13) In the given factual circumstances, we are of the considered view that the allegations made in the complaint, taken at their face value, are sufficient to *prima-facie* constitute an offense as alleged.

13.1) In this view of the matter, we are inclined to dismiss the Petition. The Petition is accordingly dismissed.

(DR. NEELA GOKHALE, J.) **(A. S. GADKARI, J.)**

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