IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 100 OF 2023

Shri. Puranchand R. Tank, (MD)
M/s Tank Auto Tooling pvt.Ltd
C-24 MIDC Waluj-Aurangabad-431 136 **...PETITIONER**
(Original Complainant)

VERSUS

1. Shri. Gaurav Girdhar Motwani (MD)
MSL Drive Line Ltd.
Regd. Office Gateway Building Apollo Bunder
Mumbai – 400 001.

2. Shri. Subhash Sudhakar Pendge (GM Purchase)
MSL Drive Line Ltd.
Plant No-89/1, MIDC Satpur
Post Box No-8 Nasik- 422 007.

3. Shri. Iftekar Amanulla Kazi (Manager)
MSL Drive Line Ltd.
Plant No-89/1 MIDC Satpur
Post Box No-8, Nasik- 422 007.

4. Shri. Mahesh Dwarkanath Kulkarni Manager (PPC)
MSL Drive Line Ltd.
Plant No-89/1 MIDC Satpur
Post Box No-8, MIDC Nasik-422 007. **...RESPONDENTS**
(Original Accused)

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Mr. F. R. Tandale, Advocate for the Petitioner
Mr. Vikrant Palshikar, Advocate for Respondents

...

CORAM : Y. G. KHOBRAGADE, J.

RESERVED ON : 24.01.2025
PRONOUNCED ON : 06.02.2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith and with consent of both the parties it is heard finally at the stage of admission.

2. The present Petitioner is the original complainant and the Respondent Nos. 1 to 4 are original accused in R.C.C. No.1822 of 2019. For the sake of brevity, parties to the present Petition are hereinafter referred in their original capacity. The Complainant and accused have filed their Written Notes of the Argument. I have gone through the Petition paper book as well as the written notes of argument filed on behalf of both the sides.

3. By the present Petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the Petitioner / Complainant takes exception to the order dated 28.07.2022 passed by the learned Additional Sessions Judge, Court No.11, Aurangabad in Criminal Revision No. 33 of 2022, thereby quashed and set aside the order of issuance of process against

the Respondents passed by the learned Judicial Magistrate First Class, Court No.15, Aurangabad in R.C.C. No.1822 of 2019 for the offense punishable under Section 406 read with Section 34 of the Indian Penal Code *(for brevity hereinafter referred as IPC).*

4. In a nutshell, facts giving rise to the present Petition are that, the Petitioner established one Engineering Unit in the name and style of M/s Tank Auto Tooling Private Limited, MIDC, Waluj Aurangabad. Respondent No.1 is the Managing Director of MSL Drive Line Ltd., and he is looking after day to day affairs of MSL Driveline Limited company. According to the Complainant, the accused have committed criminal conspiracy of documents for the entire year of 2018-19 and forged the letter dated 23.04.2019 showing excess rejection of supplied components of 2604 valued of Rs. 4,06,097/- and said amount would be recovered against the Complainant. During the Month of May, Mr. Shirish Kale and Sachin Pangre were summoned for discussion on 10.05.2019 for settlement of payments and certain offer was given. Therefore, he immediately deputed two persons and directed them to visit the establishment of the accused to see grievances of the Accused. Accordingly, those two persons visited at Nashik Plant of the accused at about 10.00 a.m., but they were

kept waiting till 14 hours for small discussion and later on they were asked to go without discussion.

5. It is further alleged that, on 18.05.2019, the Complainant received a letter through speed post with debit note of Rs. 5,43,839/- and a cheque of Rs. 1030/- against total pending payment of Rs.5,44,869/- in respect of sold items w.e.f. 28.03.2019 to 10.04.2019. According to the Complainant, the Accused have dishonestly, fraudulently and with criminal intention issued mail on 23.04.2019 to cause damage to him. Further, the intention of the accused was to remove him from the vendor-ship and to restrain him from supplying components, raising debit notes in one stroke of Rs.5,39,839/-. Further stopping business of supply of components of lacs of rupees per month. It is further contended that putting his industrial unit into financial crunches amount to criminal breach of trust on part of the accused.

6. The Complainant further alleged that, the accused have shown excess rejection of total 2064 components only on the paper work, whereas cost of each component is recoverable @ Rs.209/- and Rs.34/- each component towards labour charges. In addition, the

material consumed by the accused, same is not returned to the complainant.

7. The Complainant further alleged that, there were no any complaints and rejection reports in past 8 years. However, as per Report dated 13.05.2019, the accused rejected 758 components out of total 1,13,063 Components with effect from 01.04.2018 to 31.03.2019 and i.e., about 0.67%. It is further alleged that, on 23.04.2019 he received E-mail from the accused about rejection of 2604 components for the year 2019 but supplier rating statement shows about rejection of 758 components out of 1,13,063 in the year 2018-19.

8. It is further alleged that the rejection report of the components by the Quantity Control Manager is not head of the organization but he has shown special interest. The Quantity Control Manager forged the documents and issued debit note for amount of Rs. 5,43,839/- and deducted said amount against the pending bills. Therefore, the accused have committed offense under Section 420, 463, 464, 467, 468 and 471 of the IPC, hence, prayed for issuance of process.

9. On 06.12.2021, the learned Judicial Magistrate First Class Court No.15 Aurangabad passed an order and dismissed the complaint under Section 203 of the Code of Criminal Procedure for the offence punishable under Section 420, 467, 468 and 471 of the IPC. However, the Judicial Magistrate issued process as against the accused for the offence punishable under Section 406 read with Section 34 of IPC.

10. Being aggrieved by the said order, the accused filed Criminal Revision Application No.33 of 2022 under Section 397 of Cr.P.C. On 28.07.2022, the learned Additional Sessions Judge passed the impugned order holding that, the Complainant failed to make out essential ingredients of “Forgery” defined under Section 463, “making false document” u/s 464 of IPC, “Criminal breach of trust” u/s 406 of IPC as per the law laid down in case of ***Sanjay Pratap Singh S/o Shri. Bishwanath Singh Vs. State of Bihar (in Criminal Misc. No.10524 of 1999)*** decided on 23.04.2010; ***Sanjeev Chipalkatti Vs. State of Maharashtra (in Criminal Application No.1133 of 2012)*** decided on 05.08.2016 and ***Indian Oil Corporation Vs. M/s NEPC India Limited and Others (AIR 2006 Supreme Court 2780)***.

11. Being dissatisfied with the judgment and order dated 28.07.2022 passed by the learned Additional Sessions Judge in Criminal Revision No.33 of 2022, the Complainant approached before this Court by filing the present Petition.

12. The learned counsel for the Petitioner canvassed in vehemence that, on 02.04.2018, Respondent No.2 placed the purchase order No.NP00419000017 with the Petitioner's company for supply of components. The said purchase order was valid up to 31.03.2019. The accused were used to send the raw material for processing and after processing on said raw material, the Complainant was under obligation to supply the components to the accused persons. The Complainant delivered 2604 of flange yoke (component) for amount of Rs. 5,43,839/- including taxes. However, the accused have fabricated documents and committed offence of forgery, criminal breach of trust. However, the learned Session Judge failed to consider letter of excess rejection of total 2604 components over and above limit and raised bill dated 23.04.2019 for Rs. 4,06,097.14/- on the basis of forged and false documents.

13. The learned counsel appearing for the Complainant further canvass that, the learned Sessions Judge failed to consider the fact that, the accused No.2 send Bank invoice with statement of account, wherein bill of Rs.5,44,869/- has been deducted on account of excess rejection of components and made payment of Rs.1030/- on the basis of forged and fabricated document dated 23.04.2019. Therefore, act of the Accused constitute an offence punishable under Section 406 read with Section 34 of IPC.

14. The learned counsel for the Complainant relied on the judgment dated 06.07.2010 passed by the Hon'ble Supreme Court in Criminal Appeal No.1158 of 2010 in ***Shivjee Singh Vs. Nagendra Tiwary and Others,*** wherein it is held that, both civil and criminal proceedings are maintainable on the same state of facts, as in this case.

15. It further relied on the case of ***Sunil Todi and Others Vs. State of Gujarat and Another***, decided by the Hon'ble Supreme Court on 13.12.2021, wherein it is held that, the learned Judicial Magistrate having exercised his discretion it was not open to the High Court to substitute its discretion.

16. He further relied on the case of ***Prabhakar Pandee Vs. State of U.P. and Others***, decided on 30.05.2022 observed as under.

> *"on exercising revisional power, Id. Sessions Court can not quash the cognizance and summoning order passed by the Magistrate, in exercising its revisional power, jurisdiction of Sessions Court is very limited and the Sessions Court can only examine the illegality, irregularity and impropriety of the order passed by the Magistrate. If the Sessions Court find any illegality, irregularity or jurisdictional error then Sessions Court can not quash the proceedings but the revisional court have only power to issue directions by pointing out the error regarding the order passed by the magistrate."*

17. Per contra, the learned counsel for the Respondents / Accused canvassed that, the Petitioner has already approached before the Micro Small and Medium Enterprises Facilitation Council, Aurangabad, but the complainant did not succeed in said proceeding. Thereafter, the Petitioner filed criminal complaint against the Accused seeking penal action for the offences punishable u/s 420, 463, 464, 467, 468, 471 of IPC. The complainant alleged about committing forgery, prepared false documents and criminal breach of trust on part of the Respondents because of rejection of quantity of 2604 Flange Yoke components. However, as per the terms and conditions of the purchase order, the complainant failed to supply standard

components. The MSL Driveline System company maintains system generated data in daily routine and circulates to all the suppliers to show transparency. Since the Complainant supplied defective and sub-standard material of Flange Yoke than supply orders, therefore, those components are identified and rejected after due inspection. Therefore, no offence u/s 420, 463, 464, 467, 468, 471 of IPC constitute, hence, prayed for dismissal of the petition.

18. The learned counsel for the accused further submits that, MSL Company was providing its own raw material to the Petitioner in a packed container for specific job work. Thereafter, the Complainant was required to process said raw material into Flange Yoke components and send to the MSL Company in packed container. However, unusable output called "Process Rejection" on three accounts (i) Rejection identified at the workshop (ii) Material which has been sent by the Petitioner as satisfactory, but *prima facie* identified by MSL Company as rejected, after initial inspection on reaching the material at its factory and (iii) the materials which are sent by the complainant as satisfactory but are rejected by MSL when the material is found to be defective on it being taken on the production line under greater scrutiny.

19. The learned counsel for the Accused further canvassed that, the Petitioner supplied Flange Yoke but these were not as per specification, hence, said Flange Yoke components are rejected and deducted cost. Therefore, act of accused does not fall within the ambit of forgery, making false documents, criminal breach of trust. Therefore, the learned Revisional Court considered the material placed on record in prospective manner and quashed and set aside the order of issuance of process.

20. It is further canvassed that, the Complainant relied on supply order / contractual terms between the two companies i.e., the company of the Petitioner M/s Tank Auto Tooling Private Limited and MSL Driveline System Limited Company in which the Accused are working. The accused have not entered into any personal contract with the complainant and the nature of transaction is between the two Companies. However, the Complainant has not impleaded MSL Driveline System Limited Company being Accused. Therefore, in absence of impleading the Company, the complaint itself not maintainable, hence, prayed for dismissal of the Petition.

21. Needless to say that, the Petitioner filed Criminal S.C.C. complaint No.1822 of 2019 showing him being a Managing Director of M/s Tank Auto Tooling Pvt. Ltd. As per averment made in the Complaint it shows that there were some contractual terms and conditions between the two Companies i.e. M/s Tank Auto Tooling Pvt. Ltd., and MSL Driveline System Limited Company. The Respondents Accused Nos.1 to 4 are impleaded as an Accused because they are working being Managing Director, General Manager (Purchase), Manager and Pay-Per-Click Manager of MSL Driveline Company. The Complainant claimed that, on the basis of false and fabricated documents, the accused Nos.1 to 4 have rejected Flange Yoke component total 2604 in the year 2018-19 i.e. valid up to 31 March 2019 and wrongly deducted cost amount of Rs. 4,06,097/- against outstanding bill of May 2019.

22. On perusal of record, it *prima facie* appears that, there were trade contract between M/s Tank Auto Tooling Pvt. Ltd., and MSL Driveline System Limited Company. No doubt, the Accused Nos.1 to 4 are holding respective posts in MSL Driveline System Limited Company. Since, the trade contract was in existence between

the two Companies, therefore, it was necessary to implead the MSL Driveline company to whom product was supplied and rejected because it was not found as per terms and conditions of supply order or other reasons.

23. In case of ***Aneeta Hada Vs. M/s. Godfather Travels And Tours Pvt. Ltd., (2012) 5 SCC 661,*** *it* is observed in paragraph No.7 as under:

> *"7. Company has not been arrayed as an accused in the complaint while the allegation against the applicants is also as a Director or agent of the Company and the beneficiary is Company and against the applicants there is no specific allegation. In such situation no criminal proceedings can be initiated against the applicants even where the vicarious liability is fastened on them."*

24. Needless to say that, under purchase order dated 02.04.2018, (Exh.-A), the Complainant supplied materials, however, on 23.04.2019, the Accused have allegedly rejected Flange Yoke components total 2604 in the year 2018-19 because said product was over and above permissible limit. On face of record it shows that, the MSL Driveline company placed the Purchase Order and specifically mentioned therein about tolerance for rejection of certain number of outputs as per the procedure adopted by the MSL Driveline Company for rejection of Flange Yoke component supplied by the complainant.

It is a matter of record that, the MSL Driveline Company adopted three methods for scrutiny of product viz.,(i) Rejection of identified product at the workshop (ii) Rejection of after initial inspection on reaching at Factory premises and (iii) Rejection of product on finding defective on the production line under greater scrutiny. Since the supply order of Industrial product was existence between the two Companies and the complainant alleged about rejection of industrial product on false and forged documents, therefore, MSL Driveline System Limited Company is necessary party and in absence of impleading said company being accused, the complaint is not maintainable as against the Accused 1 to 4 as per case of ***Aneeta Hada,*** *cited supra.*

25. Irrespective of above, it is not the case of Complainant that, the certain terms and conditions of the Supply Order between the Complainant and MSL Driveline Company are intentionally, dishonestly altered or modified by the Accused 1 to 4 or they have dishonestly misappropriated or converted the said property for their own use. It is not the case of the Complainant that, the Accused have intentionally deleted any terms and conditions of any agreement of supply order allegedly executed between the two Companies.

26. In order to constitute an offence of criminal breach of trust provided under Section 405 of IPC, it is necessary to bring essential ingredients to constitute a criminal breach of trust;

(i) The accused must be entrusted with property or dominion over property;
(ii) the person so entrusted must-
(a) dishonestly misappropriate or convert to his own use that property; or
(b) dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation of
(i) any direction of law prescribing the mode in which such trust is to be discharged; or
(ii) any legal contract made touching the discharge of such trust.

27. In case of ***S.W. Palanitkar V. State of Bihar, 2002 SCC Criminal 129,*** wherein paragraph Nos. 8 to 10 observed as under:

> *"8. Before examining respective contentions on their relative merits, we think it is appropriate to notice the legal position. Every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages b in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well.*
>
> *9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (1) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.*

10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

28. In case of ***Kailas Kumar Son Sanvatiya V. State of Bihar (2003) 7 SCC 399,*** wherein Paragraph Nos. 7 to 9 it held as under:

"7. Section 409 IPC deals with criminal breach of trust by a public servant, or by a banker, merchant or agent. In order to bring in application of the said provision, entrustment has to be proved. In order to sustain conviction under Section 409, two ingredients are to be proved. They are:

(1) the accused, a public servant, or banker or agent was entrusted with property of which he is duty-bound to account for; and
(2) the accused has committed criminal breach of trust.

8. What amounts to criminal breach of trust is provided in Section 405 IPC. Section 409 is in essence criminal breach of trust by a category of persons. The ingredients of the offence of criminal breach of trust are:
(1) Entrusting any person with property, or with any dominion over property..
(2) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using of disposing of that property or wilfully suffering any other person so as to a do in violation-
(i) of any direction of law prescribing the mode in which such trust is to be discharged; or
(ii) of any legal contract made touching the discharge of trust.

9. The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether b the accused was actuated by the dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime.

(i) It was important to keep oneself reminded that while sometimes (perhaps mostly in urban areas) false accusations were made, those were not necessarily reflective of the prevailing and wide spread social prejudices against members of these oppressed classes. Significantly, the amendment of 2016, in the expanded definition of atrocity, also lists pernicious practices including forcing the eating of inedible matter, dumping of excreta near the homes or in the neighbourhood of members of such communities and several other forms of humiliation, which members of such scheduled caste communities are subjected to. All these considerations far outweigh the Petitioners' concern that innocent individuals would be subjected to what are described as arbitrary processes of investigation and legal proceedings, without adequate safeguards. The right to a trial with all attendant safeguards are available to those Accused of committing offences under the Act, they remain unchanged by the enactment of the amendment.

(ii) While considering any application seeking pre-arrest bail, the High Court had to balance the two interests: i.e. that the power was not so used as to convert the jurisdiction into that under Section 438 of the Code of Criminal Procedure, but that it was used sparingly and such orders made in very exceptional cases where no prima facie offence was made out as shown in the FIR, and further also that if such orders were not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law."

29. In case of ***Indian Oil Corporation V. M/s NEPC India limited and others, AIR 2006 SC 2780,*** wherein the Hon'ble Supreme Court observed that:

> *"a growing tendency in business circles to convert purely civil disputes into criminal cases is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged."*

30. On perusal of the complaint R.C.C. No. 1299 of 2019, it does not appear that, the Complainant has made any averment that the Respondents accused are altered any terms and conditions of any agreement / Purchase Order or the property which was entrusted with the Accused has been disposed off or the accused have converted said property for their own use or they have dishonestly disposed of said property in violation of any terms and conditions of any agreement.

31. On carefully considering averments made in the complaint, it appears about existence of 'Civil Dispute" arising out of Trade Contract between M/s Tank Auto Tooling Pvt. Ltd., and MSL Driveline System Limited Company. The contract of supply of Industrial product between the two companies shows that, the

complainant's Company was under obligation to workout on raw material and then required to supply Flange Yoke component to MSL Driveline Company. Indeed, the M/s Tank Auto Tooling Pvt. Ltd., had processed on raw material and supplied Flange Yoke component to MSL Driveline Company but said product rejected by MSL Driveline Company because it was found over and above permissible limit. Therefore, it *prima facie* appears about existence of civil dispute, therefore, the learned Revisional Court quashed and set aside the order of issuance of process issued against the Accused for the offence punishable under Section 406 read with Section 34 of IPC which does not appear perverse, illegal and bad in law.

32. Needless to say that the supply of goods under the contract and rejection of goods due to over and above excess limit of standard does not constitute breach of trust defined under Section 405 of IPC. In view of above discussion, the Petitioner / Complainant failed to make out substantial grounds to interfere with findings recorded by the learned Trial Court, hence, the present Petition is dismissed. Accordingly, Rule is discharged.

[Y. G. KHOBRAGADE, J.]

HRJadhav