



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1238 OF 2023

Lalitkumar s/o Rajendra Singh
Age: 35 years, Occu.: Business,
R/o. Village Sasudi Kalan, Block
Narsan Tahasil, Roorkee,
District Haridwar,
State : Uttarakhand.

.. Applicant

Versus

1. The State of Maharashtra
2. Ganesh s/o Parmeshwar Tagad,
Occu.: Business,
R/o. At Post Shirapur, Tq. Aashti,
District Beed.

.. Respondents

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Ms. Rutuja L. Jakhade, Advocate for the applicant.
Mrs. R. P. Gour, APP for respondent No.1/State.
Mr. A. S. Khedkar, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 03 APRIL 2025

ORDER :

. Present application has been filed initially for quashing the FIR vide Crime No.330 of 2022 registered with Ashti Police Station, District Beed and later on, by way of amendment, for quashing the proceedings in Criminal Miscellaneous Application No.139 of 2023, which appears to have been wrongly numbered by the office of Learned Judicial

Magistrate, Ashti, District Beed, for the offence punishable under Sections 420, under Section 66-C and 66-D of the Information Technology Act, 2008.

2. Heard learned Advocate Ms. Rutuja L Jakhade for the applicant, learned APP Mrs. R. P. Gour for respondent No.1/State and learned Advocate Mr. A. S. Khedkar for respondent No.2.

3. Learned Advocate for the applicant submits that perusal of the FIR would show that at the most it would be a civil transaction and, in fact, the applicant had sent a legal notice to the respondent regarding the breach of oral contract. The case is based upon the oral agreement and according to the applicant, as per the agreement, the consideration amount was Rs.16,00,000/-. According to the applicant, the goods have been delivered to respondent No.2 to the extent of Rs.5,60,000/- and the invoice was also sent. The shop of respondent No.2 was seized by District Quality Control Inspector Seed/Fertilizer, Beed on 19.06.2021 in respect of bogus seeds kept in the shop and, therefore, that notice was sent. Respondent No.2 had filed a complaint before CREDITQ and the Legal Department had sent intimation letter to the applicant regarding respondent No.2's claim to the extent of amount of Rs.5,60,000/- and to conciliate and settle the dispute for the mutual satisfaction, a false case has been lodged and the civil transaction has been given a criminal

colour. The ingredients of Section 420 of Indian Penal Code are not attracted at all. Further, there is no scope for the ingredients under Section 66-C and 66-D of the Information Technology Act, 2008.

4. Learned APP strongly opposed the application as regards Section 420 of Indian Penal Code is concerned, however, concedes that taking into consideration the charge-sheet including the FIR, the offences under Section 66-C and 66-D of the Information Technology Act are not made out. She has instructions from the Investigating Officer to state that as the initial phone call was by a different person and later on, a different person had come in picture, the investigating officer had invoked the Information Technology Act. She then submits that there are letters from Ministry of Corporate Affairs, Agricultural Department, Uttarakhand State that the applicant had no licence to manufacture the fertilizer of the specification ordered by respondent No.2. Further, in letter dated 01.02.2022 to the Director, Department of Agriculture, Dehradun, Uttarakhand, the present applicant had flatly refused to have received the amount of Rs.5,60,000/-. This shows that there was intention to cheat respondent No.2 since beginning and, therefore, this is not a fit case where this Court should exercise powers under Section 482 of the Code of Criminal Procedure to quash the proceedings for the offence punishable under Section 420 of Indian Penal Code.

5. Learned Advocate for respondent No.2 also echoes the submissions of learned APP and submits that respondent No.2 had placed the order and even the oral orders/contracts are required to be obeyed or fulfilled. She further submits that in spite of receipt of the amount, the goods were not delivered.

6. The first and the foremost fact to be noted is that the FIR states that in May 2021, the informant had made search of India Mart Website for the fertilizer, which is water soluble and can be used for the agriculture and in respect of said search, then he had received a phone call from Manager of Om Gajanan Chemicals and Fertilizer Company. That person disclosed the identity as Ankit Kumar and then he convinced regarding the quality of the fertilizer and the rates. The informant then got the information regarding the contractor of the said company from the office of the Registrar of Companies and it was made known to him that the company is placed at Dehradun in Uttarakhand State. He then received the phone call of Director, Lalitkumar Rajendra Singh i.e. the present applicant and then he had given the details. The rate was fixed. Important point to be noted is that the FIR does not contain the particulars of the agreement for how much quantity he had placed the order, when it was placed, how it was placed and what was the rate. But then he says that in view of the invoice that was sent to him by the applicant, he has made the payment. Here itself, we would like to say

that only details in the invoice cannot be considered as the details of agreement or concluded contract. When the acceptance was made is not stated. Further, when he was placing the order for fertilizer, then it was his duty also to see whether the said company had a licence to manufacture or not. The licence number should reflect somewhere in the invoice itself or before the concluding contract. Here, from the documents on record, we could get that already an offence has been registered against the applicant in Uttarakhand regarding the manufacturing of the fertilizer without licence. The investigating officer here in Maharashtra has not considered the said angle and the investigating officer has not added any other offence while presenting the charge-sheet. The manufacturing is not in Maharashtra and, therefore, we are not considering the point raised by learned APP.

7. Thus, taking into consideration the FIR and the contents of the charge-sheet, it can be seen that a civil transaction is given a criminal colour i.e. for alleged contract, when respondent No.2 had paid the amount for the goods ordered, the goods are not delivered. There is nothing in the FIR to indicate that the accused had intention to cheat since beginning.

8. Section 66-C of the Information Technology Act deals with punishment for identity theft, which prescribes that whoever, fraudulently

or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh. The facts of the case do not disclose that by making use of electronic signature, password or any other unique identification feature, there is a fraud. Section 66-D of the Information Technology Act prescribes punishment for cheating by personation by using computer resource. Here, there is absolutely no evidence in the entire charge-sheet that by any means of communication, device or computer resource there is cheating by personation. Another fact which is on record is the letter by Police Sub Inspector, Aman Shirsath to In-charge Police Officer of Cyber Police Station, Beed dated 29.12.2022, which states that respondent No.2 had made a complaint against Om Gajanan Chemicals and Fertilizer Company with PMO i.e. Prime Ministers Office, Registration No.PMOPG/E/2022/0058446, which was taken cognizance of and then it appears that the Agriculture Office of Haridwar, Uttarakhand State, Mr. Vijay Devradi has lodged a complaint with Zabreda Police Station, District Haridwar, Uttarakhand State vide Crime No.303 of 2022 for the offence punishable under Section 240 of Indian Penal Code, in which the present applicant was arrested and presented before the concerned Magistrate in Uttarakhand State on 02.01.2022.

That means, respondent No.2 has used all the forums, but whether he has filed the suit for recovery of the amount or not is not forthcoming from the entire charge-sheet.

9. As aforesaid, the ingredients of neither Section 420 of Indian Penal Code, nor Section 66-C and 66-D of Information Technology Act are made out. This is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Hence, the following order :-

ORDER

I) Criminal Application stands allowed.

II) The FIR vide Crime No.330 of 2022 registered with Ashti Police Station, District Beed as well as the proceedings in Criminal Miscellaneous Application No.139 of 2023, pending before the learned Judicial Magistrate, Ashti, District Beed, for the offence punishable under Sections 420 of Indian Penal Code, under Section 66-C and 66-D of the Information Technology Act, stand quashed and set aside as against the present applicant.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm