IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2722 OF 2022

Namdeo Dhruv Kumar Shimpi .. ***Applicant***

Versus

1. The State of Maharashtra
Through Faizpur Police Station,
Taluka Yaval, District Jalgaon.

2. Mayur Arun Mandwale .. ***Respondents***

...

WITH
CRIMINAL APPLICATION NO.2885 OF 2022

Yogesh Ramesh Kulkarni .. ***Applicant***

Versus

1. The State of Maharashtra
Through Faizpur Police Station,
Taluka Yaval, District Jalgaon.

2. Mayur Arun Mandwale .. ***Respondents***

...

WITH
CRIMINAL APPLICATION NO.3134 OF 2022

Yogesh Ramesh Kulkarni .. ***Applicant***

Versus

1. The State of Maharashtra
Through Faizpur Police Station,
Taluka Yaval, District Jalgaon.

2. Rekha Narayan Shimpi .. ***Respondents***

...

WITH
CRIMINAL APPLICATION NO.3135 OF 2022

Narendra @ Naresh Narayan Pawar .. ***Applicant***

Versus

1. The State of Maharashtra
Through Faizpur Police Station,
Taluka Yaval, District Jalgaon.

2. Rekha Narayan Shimpi .. ***Respondents***

...

WITH
CRIMINAL APPLICATION NO.3136 OF 2022

Namdeo Dhruv Kumar Shimpi .. ***Applicant***

Versus

1. The State of Maharashtra
Through Faizpur Police Station,
Taluka Yaval, District Jalgaon.

2. Rekha Narayan Shimpi .. ***Respondents***

...

Mr. R. L. Kute, Advocate for the applicants in all the matters.
Mr. S. A. Gaikwad, APP for respondent No.1/State in all the matters.
Mr. A. P. Avhad, Advocate for respondent No.2 in Criminal Application Nos.3134 of 2022, 3135 of 2022 and 3136 of 2022.

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.
DATE : 04 FEBRUARY 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Criminal Application Nos.2722 of 2022 and 2885 of 2022 have been filed for quashing the proceedings in R.C.C. No.82 of 2022 pending before the learned Judicial Magistrate First Class, Yawal, District Jalgaon arising out of Crime No.193 of 2021 dated

29.12.2021 registered with Faizpur Police Station, Taluka Yawal, District Jalgaon for the offences punishable under Section 420 read with Section 34 of Indian Penal Code, whereas Criminal Application Nos.3134 of 2022, 3135 of 2022 and 3136 of 2022 have been filed for quashing the FIR vide Crime No.207 of 2022 registered with Amalner Police Station, District Jalgaon for the offence punishable under Section 420 read with Section 34 of Indian Penal Code. The facts are similar involving a company in which the applicants were serving in different capacity and respondent No.2/informants state that they have been cheated by the company.

2. Heard learned Advocate Mr. R. L. Kute for the applicants in all the matters, learned APP Mr. S. A. Gaikwad for respondent No.1/State in all the matters and learned Advocate Mr. A. P. Avhad for respondent No.2 in Criminal Application Nos.3134 of 2022, 3135 of 2022 and 3136 of 2022. Respondent No.2 in Criminal Application Nos.2722 of 2022 and 2885 of 2022 though served, failed to appear.

3. The common facts are that the applicants were serving with Denim Hub Life Style Private Limited Company as Regional

Manager, Business Head and Employee respectively. The said company had opened many franchisee stores in Andhra Pradesh, Maharashtra, Telangana, Madhya Pradesh etc. The company has entered into franchisee agreement with many persons and different employees were given authority to sign the franchisee agreement, however, the company was taking the main decisions.

4. The informant in both the matters have contended that they have entered into the franchisee agreement and the company had asked them to contact the applicants – Namdeo Shimpi and Yogesh Kulkarni. The applicant had also contacted owner Shri. Sairam Bbalaji Patil for getting the franchisee store. According to them, they had negotiations between themselves and Shri. Sairam Patil and then the terms and conditions were decided. Accordingly, the franchisee agreement was prepared and got executed. The informants in both the matters contend that they have paid huge amount in lakhs as per the agreement, yet the company had not given proper furniture and any material for sale. When they asked for the return of amount that has also not been given. The informants were then made liable to pay the rent, electricity bill and salary of the employee without there being any business given by the company and, therefore, they say that they

have been cheated. As aforesaid, in one matter, investigation is over and charge-sheet has been filed, however, in another matter, the investigation is still incomplete. We pave perused the investigation papers also.

5. Learned Advocate for the applicants after taking us through the entire material has stated that the present applicants are the only employees and though Namdeo Shimpi has signed the agreement, yet he was not the person who was taking the decisions for the company. The terms were already settled in the negotiations between the informants and the owner. None of the applicants had taken part in the negotiations thereby anyway making any kind of representation. Therefore, if there was no fulfillment of promise/contract, then the informants could have taken the civil remedy, but a civil dispute has been tried to be given a criminal colour. He therefore relies on the decision in ***R. Kalyani Vs. Janak C. Mehta and Ors., [2009 AIR SCW 1836],*** wherein it was held that when there was no interaction shown between the appellant and accused persons, there was no question of any representation for constituting office of cheating. Further, when there is no allegation about entrustment of property, question of offence of criminal breach of trust will not

arise and, therefore, it would be a fit case where power under Section 482 of the Code of Criminal Procedure required to be exercised. Further, it has been held that vicarious liability cannot be so imposed on an employee. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. Here, Section 420 of Indian Penal Code requires *mens rea*. The present applicants are the employees and they had no intention to dupe the respondent No.2/informants. If the material has not been supplied by the company and there is loss to the informants, then they could have gone against the company not the employees.

6. Learned APP as well as learned Advocate for respondent No.2/informant in some matters strongly opposed the applications and submit that when the applicant – Namdeo Shimpi had executed the document, he had knowledge about the promises made by the company. When the terms of contract have not been abided by, then along with the civil liability there would be a criminal liability. The supply of material was withheld for no reason at all and, therefore, let the accused persons face trial. Learned Advocate for respondent No.2 relies on ***Nagpur Steel and Alloys Pvt. Ltd. Vs. P. Radhakrishna Alias Rajan and***

Others, [1997 SCC (Cri.) 1073], wherein it has been held that that merely because the alleged offence was committed during the course of a commercial transaction, the High court was not justified in quashing the complaint. Whether those allegations in the complaint were true or not can be decided on the basis of evidence led at the trial. In this case also there were allegations in the complaint that the complainant supplied all the material on unequivocal assurances given by him and accepted cheque which was dishonoured for lack of funds and, therefore, the order of exercise of powers under Section 482 of the Code of Criminal Procedure was set aside by the Hon'ble Supreme Court.

7. Here, it is to be noted that the franchisee agreement is executed on behalf of the company. There was an authority letter by the company in favour of Namdeo Shimpi. Perusal of the agreement would show that there was a grant of license in favour of the informant. Conditions were imposed and there was stipulation that the informant should pay amount of Rs.7,00,000/- and the refund amount would be to the extent of Rs.6,30,000/- out of which amount of Rs.4,00,000/- to be paid at the time of franchisee agreement and remaining amount of Rs.3,00,000/- within four months of store opening. According to

the informants this amount has been paid. The franchisee was for three years. Now, as per Annexure A-2, the shop rent would be paid by company, so also salary of one employee, electricity bill, internet bill and also the transportation for stock inward and outward would be paid by the company. Then the schedule was given as to how amount would be returned. All these promises were made by the company and as per the FIR those negotiations were between informants and the owner. It is not stated in the FIR that applicant - Shimpi or Kulkarni were present at that time. There are statements of witnesses in R.C.C. No.82 of 2022, however, they are the relatives of the informant, who were not present at the time of negotiations. Now, for the acts done by the company, the employees cannot be held responsible unless that employee is in a position of taking policy decision. The ratio laid down in ***R. Kalyani V. (Supra)*** is applicable here, however, as regards the decision in ***Nagpur Steel and Alloys Pvt. Ltd. (Supra)*** is concerned, the facts are different. A cheque was given and assurance was also given regarding the supply of material. That cheque has been dishonoured for lack of funds and, therefore, it was held that the commercial transaction will not be a hurdle or allegations regarding breach of contractual liability is hurdle. Here, no doubt there is breach of terms of contract, which can be redressed on the civil side, however, here, the applicants had not even taken part in the negotiations i.e. representations. Since inception if their involvement is not shown, it cannot be said that they had *mens rea* to cause loss to the informant and, therefore, case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure. Hence, the following order :-

ORDER

I) All the Criminal Applications stand allowed.

II) The proceedings in R.C.C. No.82 of 2022 pending before the learned Judicial Magistrate First Class, Yawal, District Jalgaon arising out of Crime No.193 of 2021 dated 29.12.2021 registered with Faizpur Police Station, Taluka Yawal, District Jalgaon for the offences punishable under Section 420 read with Section 34 of Indian Penal Code, stands quashed and set aside as against the applicant in Criminal Application No.2722 of 2022 – **Namdeo Dhruv Kumar Shimpi** and applicant in Criminal Application No.2885 of 2022 – **Yogesh Ramesh Kulkarni.**

III) The FIR vide Crime No.207 of 2022 registered with Amalner Police Station, District Jalgaon for the offence punishable under Section 420 read with Section 34 of Indian Penal Code, stands quashed and set aside as against applicant in Criminal Application No.3134 of 2022 – **Yogesh Ramesh Kulkarni**, applicant in Criminal Application No.3135 of 2022 – **Narendra @ Naresh Narayan Pawar** and applicant in Criminal Application No.3136 of 2022 – **Namdeo Dhruv Kumar Shimpi**.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm