IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3653 OF 2022

Avnterpreet Singh S/o Late
Narinder Singh Ghotra,
Age-32 years, Occu:Business,
R/o-Flat No.A-301, Harmandar
Apartment-1, Bezonbagh,
Nagpur-440004

...APPLICANT

VERSUS

1) The State of Maharashtra,
Through its Police Officer,
Police Station, MIDC (Maharashtra
Industrial Development Corporation),
Ahmednagar,

2) Shri Sachin S/o Prakash Kate,
Age-35 years, Occu:Business,
R/o-C/o- "Techno Front Electronic",
PAP J 123/124, J Block, Bhosari,
MIDC (Maharashtra Industrial
Development Corporation),
Pune-411026,
Email: technofrontelectronics@gmail.com

...RESPONDENTS

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Mr. Akshaya S. Chaudhari Advocate and Mr. Rohit R. Chougule Advocate for Applicant.
Mr. V.K. Kotecha, A.P.P. for Respondent No.1 -State.
Mr. R.S. Deshmukh, Senior Counsel i/b. Mr. Sunil P. Koli Advocate for Respondent No.2.

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CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.

DATE OF RESERVING ORDER : 18th JUNE 2025

DATE OF PRONOUNCING ORDER : 23rd JULY 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed, initially for quashing the the First Information Report (for short "the FIR") vide Crime No. 160 of 2022, registered with M.I.D.C. Police Station, Ahmednagar on 12th March 2022, for the offence punishable under Sections 420, 468, 471 of the Indian Penal Code and later on, by way of amendment, for quashing the Charge-sheet No.297 of 2022, pending before the Chief Judicial Magistrate, Ahmednagar, District-Ahmednagar and further proceedings arising out of the same.

2. Learned Advocate appearing for the applicant has taken us through the entire charge-sheet including the FIR. He submits that there was a contract between the applicant and respondent No.2 in respect of supply of N-95 masks as it was Covid period and the contract was entered into in June 2020. The informant appears to have filed Criminal Miscellaneous Application No.112

of 2021 before the learned Judicial Magistrate First Class, Newasa, District-Ahmednagar, under Section 156(3) of the Code of Criminal Procedure for investigation. Thereafter the FIR has been lodged. Even if we consider the contents of the Criminal Miscellaneous Application and the verification that was recorded before the learned Judicial Magistrate First Class on 21st June 2021, it can be seen that the informant was alleging that there was a breach of contract as the goods those were ordered, were not supplied. In the FIR also it has been stated that assurance was given by the applicant that he would supply the order of the masks and it has been stated that it was promised that it would be made available immediately. He had ordered 12,00,000 masks. The agreement was entered into online. However, for trial basis the order was for 1,00,000 masks. The amount for the said 1,00,000 masks was Rs.1,53,61,500/-. The informant gave the half of the amount i.e. Rs.76,80,750/- by N.E.F.T. to the applicant. It was given in writing by the applicant that the goods would be supplied within ten days. However, after a months time also when the order was not supplied, it is the statement in the FIR that the informant had asked the applicant and the applicant told that the order is now in process and informant should wait. Informant states that he again waited for a month and thereafter informant received an amount of Rs.22,85,000/- on his account on 6th July 2020. The informant then asked the applicant as to why he returned the amount. The applicant told him that the said order was placed with the company in Malaysia and he has given Rs.54,00,000/- to the Malaysian Company, however, the Malaysian Company has not fulfilled the order and therefore, the remaining amount has been sent back to the informant. When the informant asked, as to whether there is any receipt from the Malaysian Company, in response to the same the applicant shared with him the money transfer receipt and the bill. According to the informant, the said money transfer receipt is forged and the informant told that the applicant has cheated him and at that time the applicant told him that he may do whatever he wants.

3. It is submitted that during the course of investigation, various documents have been seized, especially the complaint application given to the Economic Offence Wing, Nagpur. It also states that the amount has not been refunded to him. The documents those have been collected from the Yes Bank would show that the amount was transferred. Now the applicant is fighting with the Malaysian Company in the International Court for the refund of the amount. There was no intention on the part

of the applicant to cheat the informant. The transaction is purely of civil nature. Learned Advocate appearing for the applicant submits that though the Criminal Miscellaneous Application No.112 of 2021 was filed for taking action under Section 156(3) of the Code of Criminal Procedure, but there was no order that was passed in the said matter. By the pursis dated 3rd October 2022, it was informed by the informant that he has no desire to proceed with the matter and thereupon the said application came to be disposed of as withdrawn by order dated 12th November 2022. Thus, there is total suppression of facts in the FIR.

4. Learned Advocate for the applicant relies on the decision in ***Vijay Kumar Ghai and others vs. State of West Bengal and others, (2022) 7 S.C.C. 124***, wherein the difference between the offence under Sections 420, 405, 406, 415 of the Indian Penal Code has been explained and when quashment in such cases can be said to be warranted, has been discussed.

5. The learned APP as well as learned Senior Counsel Mr. R.S. Deshmukh instructed by Mr. Koli Advocate, vehemently opposed the Application and submitted that though the base for the FIR is an agreement, yet it can be seen that the applicant had no

intention to obey the terms of agreement. Sending partial money back cannot be said to be an act which can be considered in favour of the applicant. At no point of time it can be seen that it was disclosed by the applicant that he would be getting those articles from a Malaysian Company. If that disclosure would have been made then certainly the informant would have had a second thought as to whether to enter into the contract or not and whether to send the substantial amount or not. The fact is that neither the consignment was provided as ordered by the informant to him nor his remaining amount has been sent. Now all the other legal steps are shown to have been taken by the applicant just to raise his defence, which cannot be considered and therefore, this is not a fit case where this Court should exercise its powers under Section 482 of the Code of Criminal Procedure.

6. Learned Senior Counsel for respondent No.2 relies on the decision in ***Priti Saraf and another vs. State of NCT of Delhi and another, (2021) AIR (SC) 1531 : (2021) 2 SCR 577***, wherein, after taking note of the decision of ***State of Haryana and others vs. Bhajan Lal and others, 1992 Suppl. (1) SCC 335***, it has been observed thus:-

> " 26. This Court has clarified the broad contours and parameters in laying down the guidelines which have to be kept in mind by the High Courts while exercising inherent powers under Section 482 CrPC. The aforesaid principles laid down by this Court are illustrative and not exhaustive. Nevertheless, it throws light on the circumstances and the situation which is to be kept in mind when the High Court exercises its inherent powers under Section 482 CrPC.
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> 27. It has been further elucidated recently by this Court in Arnab Manoranjan Goswami Vs. State of Maharashtra and others, 2020 SCC Online SC 964 where jurisdiction of the High Court under Article 226 of the Constitution of India and Section 482 CrPC has been analysed at great length.
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> 28. It is thus settled that the exercise of inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinise the complaint/FIR/charge-sheet in deciding whether the case is the rarest of rare case, to scuttle the prosecution at its inception."

7. Here the facts are required to be considered first. In the FIR lodged on 12th March 2022, the informant has given the details about the transaction as to how he entered it into with the applicant. The transaction was the contract for supply of N-95 masks, 3 M 8210. Since it was Covid period in June 2020, it appears that the informant had placed the said order. In fact his company is dealing with the business, as per his own story, that he would take the orders from his customers for supply of

any goods and after fetching it from the others, would supply the same to his customer. His company is by name "Technofront Electronics Company". The investigating officer has not collected the Shop Act license or any other license of the informant's company. The informant states that one V.S. Enterprises, Delhi was his customer and on the behalf of that company he placed the said order with the company of the applicant. Initial talks appear to be on mobile phone and then he demanded 12,00,000 masks to be supplied. An agreement was sent by the applicant to him online and on trial basis, at that time the informant placed the order for 1,00,000 masks of the specified quality. The applicant gave order confirmation in the form of proforma invoice, in which the price was quoted for 1,00,000 masks at Rs.1,53,61,500/- . It was then stated that the half of the amount of the same should be sent. Accordingly, the informant has transferred the amount of Rs.76,80,750/- from his account in IDBI Bank, Bhosari Branch, Pune, through N.E.F.T.. The other details in the FIR are already reproduced and therefore, we do not want to repeat the same. The fact is that as to how the M.I.D.C. Police Station, Ahmednagar got the jurisdiction to investigate, is a question. Herein this case there is a total suppression of facts regarding Criminal Miscellaneous Application

No.112 of 2021 filed by the informant with Judicial Magistrate First Class, Newasa, District-Ahmednagar, in the FIR. Now it is tried to be stated that the company of respondent No.2 is in Ahmednagar M.I.D.C. area. The date of transfer or relocating his company at M.I.D.C., Ahmednagar would then carry the importance. The amount that has been sent through N.E.F.T., is from the IDBI Bank, Bhosari Branch, Pune. However, we may not go much into the details about the place of investigation, but the fact remains is that on 3rd October 2022, the pursis came to be filed in Criminal Miscellaneous Application No.112 of 2021 before the learned Judicial Magistrate First Class, Newasa, copy of the same has been made available, wherein the informant has stated that he has no desire to proceed with the application and therefore, it should be disposed of. Accordingly, the said application came to be disposed of. But then prior to that, it appears that respondent No.2 had managed to get the FIR registered with M.I.D.C. Police Station, Ahmednagar (Ahilyanagar), on 12th March 2022, as aforesaid, with the suppression of the said Criminal Miscellaneous Application.

8. On the merits of the case, certainly there was a contract which has not been obeyed. Of course, when there is a transaction of commercial nature, then it may give remedy under

both i.e. under civil law as well as criminal law. But the fact is that in order to constitute an offence, it has to fulfill the ingredients of the offence. When the offence was registered, it was under Section 471, 468 and 420 of the Indian Penal Code, however, when the charge-sheet has been filed, it is only under Section 420 of the Indian Penal Code and it appears that the informant has not objected to the dropping of Sections 471 and 468 of the Indian Penal Code. In the charge-sheet, the gist in Column No.13 would show that the applicant had received an amount of Rs.76,80,650/-, out of which it was transpired that he has transferred an amount of Rs.53,95,641/- to Malaysian Company and the remaining amount of Rs.22,95,109/- has been returned to the informant, thereby the amount which was sent to Malaysian Company has not been returned nor the masks were supplied and thereby cheating has been committed, is the story of the prosecution, which is certainly only a civil transaction. If the applicant had the intention to cheat, he would not have returned the remaining amount. Further, the contention of the informant that the document regarding transfer of the amount through Yes Bank by the applicant to the Malaysian Company is the forged document, appears to be false contention taking into consideration the documents which have been collected from the Yes Bank during the course of investigation.

9. The applicant has produced the copy of FIR vide Crime No.248 of 2022 dated 18th April 2022, lodged by him with Jaripataka Police Station, Nagpur, for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code against the Malaysian Company. Now as regards, how to recover the remaining amount by the informant will have to be considered by him. But certainly the offence under Section 420 of the Indian Penal Code cannot be said to have been made out in the present case.

10. In ***Vijay Kumar Ghai and others vs. State of West Bengal and others,*** (supra), it has been stated that Section 415 of the Indian Penal Code defines "cheating". A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating. Section 420 of the Indian Penal Code defines "cheating and dishonestly inducing delivery of property". Section 420 of the Indian Penal Code is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as

valuable securities. The aforesaid section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. It has been further observed that there can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intentions is the basis of the offence of cheating. Herein the present case, there was equal duty upon the informant before entering into the contract, to make an inquiry as to from where the applicant would be fetching the goods. He does not come with the case that the applicant had posed himself as the manufacturer of N-95 masks of the specifications which were to be ordered by the informant. When it is a document relating to the health products, there is an additional duty on the person who is placing the order, for detail inquiry to be made, whether the manufacturer has appropriate license, if the goods are to be imported then whether the importer has proper license etc. When the statements in respect of these things are missing and there is no such record collected during the investigation, we are of the opinion that it is purely a civil transaction and therefore, this is a fit case for quashment of the FIR, Charge-sheet and the further proceedings arising out of the same. Hence, the following order:-

O R D E R

(I) The Application stands allowed.

(II) The proceedings in Charge-sheet No.297 of 2022, pending before the Chief Judicial Magistrate, Ahmednagar, District-Ahmednagar, for the offence punishable under Section 420 of the Indian Penal Code, and further proceedings if any, arising out of the First Information Report vide Crime No. 160 of 2022, registered with M.I.D.C. Police Station, Ahmednagar on 12th March 2022, stands quashed and set aside as against applicant - Avnterpreet Singh S/o Late Narinder Singh Ghotra.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JULY25