



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1112/2021

Jayesh Navnitlal Shah,
Aged about 53 yrs., Occ. Business,
R/o. B-6/17 Majithia Apartments, 189,
S.V. Road, Irla, Vile Parle (W),
Mumbai 400056 (Maharashtra)

...APPLICANT

VERSUS

1. State of Maharashtra, through
Police Station Officer, Police Station,
Wadi, Nagpur.
2. Shri Sahil Hemant Shah,
Occ., Business, R/o. Flat 302,
Ganga Apartments, Ramdas Peth,
Nagpur.

NON-APPLICANTS

Mr. Amol Jaltare, Advocate for applicant.
Mr. A.R. Chutke, APP for non-applicant No.1/State.
Mr. Amil A Choube, Advocate for non-applicant No.2.

CORAM : NITIN B. SURYAWANSHI AND
PRAVIN S. PATIL, JJ.

JUDGMENT RESERVED ON : 14.02.2025
JUDGMENT PRONOUNCED ON : 12.03.2025

JUDGMENT : (PER: NITIN B. SURYAWANSHI ,J.)

Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This application filed under Section 482 of the Code of Criminal Procedure (“Cr.P.C.”) seek quashing of the proceedings of RCC No. 4599/2022 pending in the Court of 11th Civil Judge, Junior Division and JMFC, Nagpur, registered on the basis of First Information Report (“FIR”) bearing Crime No. 175/2021 dated 11.05.2021 registered with Wadi Police Station, Nagpur under Sections 406, 420 of the Indian Penal Code.

3. Non-applicant No.2 lodged FIR in question on 11.05.2021 alleging that he is the Director of M/s. Signum Fire Protection (India) P. Ltd. Company which manufactures fire doors, wooden doors, fire-proof doors etc. He wanted to purchase a panel folding machine, therefore he searched on-line and found the name of applicant, his cell phone number and email address. Then he contacted applicant and applicant gave him assurance that he is authorized to sell all the products of Shroeder Fasti Technologie GMBH Company (for short

“Shroeder Company”) and he has entered into a contract with the said Company. Applicant’s company, Metfab International agreed for installation and commissioning of the machine and to give training to the employees, who would be operating the machine and would look after the service of the machine for a period of two years, for which he would be charging Rs. 5,00,000/-. There was technical consultation and exchange of emails between the applicant and non-applicant No.2 during the period between October 2018 to November 2018. Applicant sent a catalogue and offer letter for purchasing machine on 23.11.2018, wherein it was mentioned that his Metfab International Company would be giving two years service for the purchased machine and Rs. 5,00,000/- would be the charges for the same. Shroeder Company will startup and will give five days training to employee for Euros € 9000.

Then applicant visited non-applicant No.2’s company, Signum, on 11.12.2018 and it was decided to give order to the Shroeder Company. Therefore, a cheque of Rs. 5,00,000/- was given by non-applicant No.2 to the applicant for proposed installation of machine and for two years service thereafter. Applicant gave assurance

that installation of machine or startup would be done by the expert of applicant's company. Thereafter, there was continuous exchange of emails between applicant and non-applicant No.2.

By email dated 11.01.2019, applicant assured that training to the employees of non-applicant No.2 would be given by applicant's company and Euros € 9000 need not be paid to the Shroeder Company. By email dated 22.01.2019, applicant informed non-applicant No.2 that Shroeder Company had insisted a cost of startup and 5 days training will be Euros € 11000. Non-applicant No.2 asked applicant by email that if Shroeder Company will be doing the commissioning of the machine and will be giving 5 days training for € 11000, then complainant (non-applicant No.2) is ready to pay the same, but the applicant should refund the amount of Rs. 5,00,000/- paid to him. On that, applicant replied by email dated 13.02.2019 that he is ready to refund Rs. 2,00,000/- out of Rs. 5,00,000/- and against balance of Rs. 3,00,000/-, he will provide service support during warranty period and one year post warranty. Non-applicant No.2 sent email to the applicant that seller company will be providing

service and therefore, he does not need applicant's service. However, the applicant refused to pay Rs. 5,00,000/- to the complainant.

It is stated that Shroeder Company has clarified on 22.01.2019 and 21.01.2019 that applicant is not having knowledge and training for startup or to provide any service. Non-applicant No.2 therefore, realized that applicant's company is not having any technical knowledge for startup or to provide any kind of service and the applicant has cheated non-applicant No.2's company by giving false information that there is an agreement between Shroeder Company and applicant's company and grabbed an amount of Rs. 5,00,000/- from non-applicant No.2. Shroeder Company has also informed non-applicant No.2 that the applicant has no technical knowledge of startup. Therefore, non-applicant No.2 claimed that applicant has cheated his company.

4. Heard learned counsel for applicant, learned APP for State and learned counsel for non-applicant No.2.

5. Learned counsel for applicant submits that a civil dispute is tried to be converted in the criminal case by non-applicant No.2 which

amounts to an abuse of the process of law. He states that non-applicant No.2 has already filed Special Civil Suit No.890/2021 for recovery of Rs. 5,00,000/- paid to the applicant. He seeks quashing of the proceedings against the applicant by relying on decisions in *Vesa Holdings Private Limited and anr. Vs. State of Kerala and ors., (2015) 8 SCC 293, Naresh Kumar and anr. Vs. State of Karnataka and anr., 2024 SCC Online SC 268, Sarabjit Kaur Vs. State of Punjab and anr., (2023) 5 SCC 360 and Deepak Gaba and ors. Vs. State of Uttar Pradesh & anr., 2023 SCC Online SC 3.*

6. Per contra, learned counsel for non-applicant No.2 strenuously opposed the application stating that since beginning, applicant had intention to cheat non-applicant No.2. No machine was purchased and received from Shroeder Company, therefore, there was no occasion for applicant to give service. Though there was no contract between the applicant and Shroeder Company, by giving an impression that there is such an agreement, applicant has accepted an amount of Rs. 5,00,000/- towards commissioning the machine and giving service. He submits that ingredients of Section 415 of the Indian Penal Code are clearly made out in the present case and

deception on part of applicant and fraudulent and dishonest inducement by the applicant to deliver Rs. 5,00,000/-to him is clearly made out. It is obvious that at the time of making inducement to pay Rs.5,00,000/-, there was dishonest intention on the part of applicant. Therefore, there is no merit in the applicant's case and the application filed by the applicant deserves to be dismissed. In support of his submission, he relied on decision of the Apex Court in case of ***A.M. Mohan Vs. The State represented by SHO and anr***, (arising out of SLP (Criminal) No. 9598/2022, decided on 20.03.2024.)

7. Learned APP by relying on the reply-affidavit has opposed the application.

8. It is well settled that every breach of contract would not give rise to an offence of cheating, only in those cases where deception was made at the very inception, breach of contract would amount to cheating. If the intention to cheat is developed later on, it would not amount to cheating. For the purpose of constituting an offence of cheating, the complainant is required to show that accused had fraudulent or dishonest intention since inception, at the time of making promise or representation. Even in the case, where allegations

are made in regard to failure on part of accused to keep his promise, in absence of culpable intention at the time of making initial promise, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

9. In the present case, non-applicant No.2 has alleged that his company has made payment to Metfab (of applicant) by cheque of Rs.5,00,000/- issued on 10.12.2018, in response to quotation dated 01.03.2018 of Metfab to Singnum company of non-applicant No.2, wherein it is mentioned that Rs.5,00,000/- would be payable to Metfab for two years service support. This payment is against a purchase order for Euro € 170000 payable to German Company Shroeder for its machines and Rs. 5,00,000/- payable to Meftab (applicant) for its services.

10. The documents placed on record show that non-applicant No.2's company was exploring the possibility of placing order through applicant's company for procuring and installing panel folding machines from Shroeder Company. By company letters dated 12.06.2019 and 09.07.2019. Non-applicant No.2 asked applicant to

refund an amount of Rs. 5,00,000/-. On 22.07.2019, Non-applicant No.2, issued a legal notice running into 16 pages to the applicant and asked for refund of amount Rs. 5,00,000/- along with accrued interest. Thereafter, FIR in question is lodged on 11.05.2021 i.e. after a delay of about 30 months.

11. Exchange of emails and the correspondence between the applicant, non-applicant No.2 and Shroeder Company indicate that dispute between applicant and non-applicant No.2 is purely of a civil nature and the case appears to be breach of contract for which civil remedy is already availed by non-applicant No.2 by filing Special Civil Suit No. 890/2021 on 27.10.2021 for recovery of Rs. 5,00,000/-. Following observations in Naresh Kumar (*supra*), support the case of applicant:-

“7. Relying upon the decision in Paramjeet Batra (supra), this Court in Randheer Singh v. State of U.P. (2021) 14 SCC 626, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In Usha Chakraborty & Anr. v. State of West Bengal & Anr. 2023 SCC OnLine SC 90, relying upon Paramjeet Batra (supra) it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the

inherent powers under Section 482 of the Code of Criminal Procedure.

8. *Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case, as held by this Court in Sarabjit Kaur v. State of Punjab, (2023) 5 SCC 360. Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court, in Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293, has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise.”*

12. Admittedly, the transaction between non-applicant No.2 of purchasing machinery from Shroeder Company could not materialize. However, that could not be said to be due to misrepresentation on part of applicant. In the facts of the present case, therefore it cannot be said that applicant had dishonest intention since beginning for inducing non-applicant No. 2 to pay an amount of Rs. 5,00,000/- to him and thereby, cheated his company. Here a purely civil dispute is tried to be converted into criminal prosecution and continuation of the same against applicant therefore, is an abuse of the process of the Court.

13. In A.M. Mohan (*supra*), it is held that, “(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

14. There cannot be any dispute about the aforesaid proposition, however, in the present case from the material collected during of investigation, no ingredients of Section 415 of the Indian Penal Code are made out and this case is essentially a civil dispute, for which non-applicant No.2 has already availed civil remedy. Hence, this citation would not assist non-applicant No.2.

15. For the aforementioned reasons, application is allowed. The Proceeding of RCC No. 4599/2022 pending in the Court of 11th Civil

Judge, Junior Division & JMFC, Nagpur, registered on the basis of FIR No. 175/2021 registered with Police Station Wadi, Nagpur is hereby quashed and set aside.

16. Rule made absolute in above terms.

(PRAVIN S. PATIL, J.)

(NITIN B. SURYAWANSHI, J.)

Gohane