



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.77 OF 2021**

1. Nitin Chandulal Thakkar,
Age – 60 years, Occ – Business,
R/o-88, Balkrishna, Sector -7,
Satyagarh Chavni, Ahmedabad City,
Ahmedabad, Gujarat.
2. Lalitmohan Radhakrishna Chamariya,
Age 59 years, Occ-Business,
R/o-T-98, Sharanam Country, Chitvan Society,
Gala Gymkana Road, At Bopal, Ahmedabad.
3. Nareshkumar Ramgopal Sharma,
Age 58 years, Occ - Business,
R/o-02, Shailraj Bungalows, Ramdev Nagar,
Satellite, Ahmedabad City, Ahmedabad,
Manekbag, Gujarat.
4. Ashish Virendrabhai Shah,
Age-62 years, Occ-Business,
R/o-2, Jain Merchant Society, Ellisbridge,
Paldi, Ahmedabad.
5. Devkinandan Gopiram Agarwal,
Age-65 years, Occ - Business,
R/o-Gopiram, 4, Nilgiri Bunglo,
Behind Ashwamegh-5, 132 feet,
Road, Satellite, Ahmedabad City,
Ahmedabad, Manekbag, Gujarat.

..Applicants

Versus

1. State of Maharashtra,
Through Investigation Officer
City Police Station, Jalgaon
Taluka & District - Jalgaon.
2. Rishabh Metals & Chemicals Pvt Ltd.
Through Shri. Dnyandev Devidas Wani,
Law Officer,
Address - Khandesh Mill Complex,
Jalgaon, Taluka & District – Jalgaon.

..Respondents

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Mr. V. B. Patil, Advocate for the Applicants.
Mr. V. K. Kotecha, APP for Respondent No.1.
Mr. S. S. Bora, Advocate for Respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.
DATED : 18th SEPTEMBER, 2024.**

JUDGMENT (Per S. G. Chapalgaonkar, J.)

1. The applicants have approached this Court under Section 482 of the Criminal Procedure Code for quashing of FIR in Crime No.652/2020 dated 30.10.2020 registered with Jalgaon City Police Station, Dist. Jalgaon for offences punishable under Sections 406, 420 r/w 34 of the Indian Penal Code and consequential criminal proceeding in R.C.C. No.450/2021 pending before Judicial Magistrate First Class, Jalgaon.

2. The respondent no.2 lodged report to the Jalgaon City Police Station alleging he is Law Officer of M/s. Rishabh Metals and Chemicals Private Limited, which is a registered company in terms of Companies Act. It has been incorporated in the year 1975 and engaged in business of processing and selling variety of chemicals. The company accepts orders through emails and supply chemicals on credit as per demand of customers. It is alleged that applicants / accused are Directors of company namely Narol Textile Infrastructure and Enviro Management (NTIEM). The said company put purchase orders for 'Rishlyte and Rishfloc' during the period from 21.07.2019 to 21.08.2019 worth Rs.44,09,234/-. In response goods were supplied through Chintan Freights Carrier on assurance that bills shall be cleared within a period of 30 days. The GST amount on the goods supplied was paid by M/s. Rishabh Metals and Chemicals Private Limited. The accused persons failed to release the amount of bills towards goods supplied. As such,

accused persons deceived M/s. Rishabh Metals and Chemicals Private Limited and caused loss of Rs.44,09,234/-.

3. In pursuance of aforesaid report, Crime No.652/2020 came to be registered against applicants, who are Directors of NTIEM. The investigation progressed in crime. Finally, charge-sheet has been filed and R.C.C. No.450/2021 which is pending before Judicial Magistrate First Class at Jalgaon for trial.

4. Mr. Patil, learned Advocate appearing for the applicants submits that FIR is false, frivolous and without element of criminality. The applicants have been falsely implicated in the aforesaid crime. The applicants have been arraigned as accused without making company as accused. The dispute between two companies is predominantly of civil nature. The matter falls short of offence of cheating and criminal breach of trust. There is no element of deception at the inception of transaction. It may be a matter of non-fulfillment of contractual liability and nothing else. Both the companies were in the regular business. The NTIEM has made payment of Rs.1,45,33,055/- on or around 21.10.2019. However, later on there had been dispute over cost, which can be observed in the telecommunication and email exchanged between parties. He would, therefore, urge that ingredients of offence charged are absent in the matter. The registration of FIR and consequential proceeding is abuse of process of law. Hence, he urges to quash and set aside FIR and further proceeding.

5. Per contra, Mr. Kotecha, learned APP appearing for the respondent-State and Mr. Satyajit Bora, learned Advocate appearing for respondent no.2 vehemently opposes prayers in the application. They would submit that applicants are Directors of

NTIEM. They were responsible for day to day business of the Company. The applicants, while discharging their duties as Directors induced M/s Rishabh Metals and Chemicals Private Limited to supply goods on credit. After receipt of goods, they were obliged to release payment towards goods supplied within a period of 30 days. However, amount of Rs.44,09,234/- has been illegally withhold by applicants- Directors of NTIEM. Time and again they were persuaded to release the payment. The GST amount is already deposited by M/s. Rishabh Metals and Chemicals Private Limited for goods supplied. Now applicants are raising false and frivolous grounds in the application. Their intention to deceive can be gathered from their conduct. The correspondence between the parties also support the case of informant. There is sufficient material to gather deceitful intentions of the applicants in the transaction. There is triable material against them. The inherent powers under Section 482 of the Criminal Procedure Code cannot be exercised in such a set of factual aspects and parties must be relegated to the trial. As such, they urge to reject the application.

6. We have considered submissions advanced on behalf of learned Advocates appearing for respective parties. We have minutely considered the contents of the FIR and material placed into service alongwith reply affidavit filed by respondent no.2. The First Information Report has been lodged against applicants by authorized officer of M/s. Rishabh Metals and Chemicals Private Limited. They are Directors of NTIEM situated at Ahmedabad. There was privity of contract between companies. In pursuance of order placed for supply of goods by NTIEM, M/s. Rishabh Metals supplied goods worth Rs.44,09,234/- during the period from 21.07.2019 to 21.08.2019. The component of GST worth Rs.7,13,700/- is also deposited by M/s. Rishabh Metals. However,

the bills towards supply of aforesaid goods have not been cleared within credit period of 30 days as agreed between parties. The applicants being Directors were responsible for day to day business of NTIEM hence they have been arraigned as accused. The sum and substance of allegation in the FIR is that applicants- Directors of NTIEM have illegally withhold bills towards goods supplied on credit by M/s. Rishabh Metals. As such, they have committed offence under Section 406 and 420 of the Indian Penal Code. Section 420 of the Indian Penal Code prescribes for punishment for cheating.

7. The term cheating has been defined under Section 415 of the Indian Penal Code. Section 415 of the Indian Penal Code reads as follows:

“415. Cheating —

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".”

8. Plain reading of aforesaid section depicts that to bring home ingredients of Section 415 of the Indian Penal Code, it is necessary to show that at the time of making the promise, accused had fraudulent and dishonest intention to retain property or to induce the person so induced to do something which he would not otherwise. The aforesaid ingredients are more elaborately and succinctly laid down in case of ***Ram Jas vs State of U.P.***¹, which reads as follows:

(i) There should be fraudulent or dishonest inducement of a person by deceiving him;

¹ AIR 1974 SC 1811.

(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 or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

9. Further, in case of ***Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi***², Supreme Court of India observed that in order to constitute an offence of cheating it must be shown that accused had fraudulent or dishonest intention at the time of making representation or promise and such culpable intention right at the time of entering into agreement cannot be presumed merely from his failure to keep promise subsequently. Similarly, in the case of ***Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr.***³, it is observed as under:-

“15.that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise.”

10. In the instant case, what has been alleged is that M/s. Rishabh Metals and Chemicals Private Limited had policy of supplying goods on credit period of 30 days. The NTIEM ordered for supply of chemicals ‘Rishlyte and Rishfloc’ from M/s. Rishabh

² (2003) 5 SCC 257.

³ 2000 (4) SCC 168.

Metals and Chemicals Private Limited. Consequently, goods were supplied during the period from 21.07.2019 to 21.08.2019 worth Rs.44,09,234/- on credit basis. However, NTIEM failed to release payment within 30 days. Consequently, M/s. Rishabh Metals and Chemicals Private Limited has been deceived and cheated for the amount of Rs.44,09,234/- towards bills of goods supplied and GST amount of Rs.7,13,700/- realized by M/s. Rishabh Metals and Chemicals Private Limited against sale of aforesaid goods.

11. Pertinently, from the contents of the FIR it is not discernible that at the inception of the transaction, NTIEM had fraudulent intention and order for supply of goods was deceitful or M/s. Rishabh Metals was induced to release the goods with intention to defraud them. In short, allegations in the FIR fall short of offence of cheating. Even FIR is absolutely silent about deception by NTIEM. Pertinently, there are no stipulations in FIR against any of the applicants/directors depicting their overtact. Eventually, keeping in mind principles of law espoused by the Supreme Court ingredients of cheating as defined under Section 415 of the Indian Penal Code are found to be absent in the present case.

12. Now let us turn to the another charge for offence under Section 406 of the Indian Penal Code. Section 406 of the Indian Penal Code prescribes punishment for criminal breach of trust. The criminal breach of trust is defined in Section 405 of the Indian Penal Code, which reads as under:

“405. Criminal breach of trust —

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such

trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."

13. Plain reading of Section 405 depicts following ingredients to fulfill definition of criminal breach of trust:

- (a) *that person should have been entrusted with property or entrusted dominion over the property;*
- (b) *that person should dishonestly misappropriate or convert to his own use property, or dishonestly used or disposed of that property or wilfully suffered any other person to do so and;*
- (c) *that such misappropriation, conversion, used or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged or by any legal contract, which person has made, touching the discharge of such trust.*

14. In case of ***Onkar Nath Mishra & Ors Vs. State (NCT Of Delhi) & Anr***⁴, the Supreme Court of India observed that there are two distinct parts involved in commission of offence of criminal breach of trust. First part consists of creation of obligation in relation to the property over which dominion or control is acquired by the accused. Second is misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created. In facts of the present case, it can be observed that in course of regular business transaction with M/s. Rishabh Metals, NTIEM has released total amount of Rs.1,45,33,055/- towards goods supplied on or around 21.10.2019. Pertinently, this regular nature of transaction as pleaded in the application is not controverted in the affidavit-in-reply filed on behalf of respondent no.2. It is, therefore, discernible that NTIEM had regular business transactions for which they have made payments. However, so far as the goods supplied during the period from 21.07.2019 to 21.08.2019, the NTIEM has raised issue of costing based on manufacturing process adopted by M/s. Rishabh Metals and made

⁴ (2008) 2 SCC 561.

correspondence for issuing credit note worth Rs.44,09,234/- to which M/s. Rishabh Metals has not agreed. As such, the amount worth Rs.47,16,950/- was debited in the account of respondent no.2. Copy of such debit note alongwith communication dated 14.03.2020 is placed on record. Even aforesaid documents are not disputed in affidavit-in-reply filed by respondent no.2. At this stage, it is apposite to refer certain parameters of jurisdiction under Section 482 of the Criminal Procedure Code as observed by the Supreme Court of India in case of **Mitesh Kumar J. Sha** (supra) in paragraph nos.39 and 40, which reads as under:

“39. It was also observed:- (Indian Oil Corpn. Case, SCC pp. 748-49, para 13)

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This 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....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 through criminal prosecution should be deprecated and discouraged.”

40. On an earlier occasion, in case of G. Sagar Suri and Anr. Vs. State of UP, this Court has also observed:-

“8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

15. The net result of aforesaid discussion would lead us to conclude that impugned FIR predominantly suggests dispute of civil nature without any element of criminality. Both the parties have entered into contractual obligation and dispute appears to be regarding cost reduction of the supplied goods. The FIR or documents placed into service before us are bereft to make out offence like cheating and criminal breach of trust. Even there are no specific wordings in the FIR attributing intentional deception from the inception of the transaction. Apparently, it is a matter of non-fulfillment of contractual liability. The criminal proceeding cannot be allowed to be used as tool for settling contractual obligations. Resultantly, we are of the considered view that in absence of *prima facie* case to make out ingredients to attract offence under Section 406 and 420 of the Indian Penal Code, it is a fit case to invoke jurisdiction under Section 482 of the Criminal Procedure Code for quashing of FIR. Hence, we proceed to pass following order:

ORDER

- a. Criminal Application is allowed in terms of prayer Clause (B), which reads as under:

“B. By appropriate order or direction in the like nature, FIR no. 652/2020/C.R. no. 202/2020 registered with the City Police Station, Jalgaon for the offence punishable u/s. 406, 420, 34 of the I P C and Chargesheet bearing no. as R.C.C.No. 450/21 may please kindly be quashed & set aside and for that purpose appropriate orders may kindly be passed.”

- b. Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE