
2011 eGLR_HC 10007013

Before the Hon'ble MR M R SHAH, JUSTICE

MRS PUNAM JAIN AND 3 APPLICANT Vs. STATE OF GUJARAT AND 2 RESPONDENT

CRIMINAL MISC. APPLICATION No: 9059 of 2006 , Decided On: 10/11/2011

P.M.Thakkar, Singhi & Co., K.P.Raval, Nanavati Associates

MR.M.R. SHAH

1.0. Present Criminal Miscellaneous Application under Section 482 of the Code of Criminal Procedure has been preferred by the applicants original accused nos. 3 to 6 to quash and set aside the impugned complaint/FIR being CR.No. 1183 of 2005 registered at Chhani Police Station, Vadodara for the offences punishable under Sections 403, 405, 409, 415, 418, 420 r/w Section 120 B and 114 of the Indian Penal Code.

2.0. Respondent no.2 herein original complainant Gujarat State Fertilizer & Chemicals Limited had lodged the impugned FIR against the petitioners and others at Chhani Police Station, for the offences punishable under Sections 403, 405, 409, 415, 418, 420 r/w Section 120 B and 114 of the Indian Penal Code, alleging inter alia, that original accused no.7 partnership firm M/s. Sultanchand Bimalprakash purchased the goods worth Rs.33,15,32,000/ during the period between 1.4.1994 to 31.10.2005 out of which they have paid a total sum of Rs.30,71,77,000/ by selling such goods and there were dues of Rs.5,02,31,000/ accused persons have not paid despite their repeated promises and thereby they have entered into the criminal conspiracy with a view to cause financial loss to the complainant company and utilizing the said amount for themselves, thus committed the offence of breach of trust and cheating etc. It is further alleged in the said FIR that original accused nos. 1,3 and 7 were appointed as agent and agreement was entered into between them with the complainant company on 10.11.1983 and they were appointed as agent to sell the Nylon 6 goods of the complainant company, and the accused nos. 4,5 and 6 petitioner nos.1 to 3 herein were associated with accused no.7 partnership firm. That thereafter, the accused no.3 retired as a partner of the accused no.7 partnership firm in the year 2005 and fresh agreement came to be entered into on 6.3.2005 between original accused nos. 1,2 and 7.

That even thereafter, also the goods were supplied despite the dues were there but on assurance/promises given by the accused persons that they will clear the arrears and relying upon those promises the complainant carried on the business with the accused persons and

supplied goods even thereafter. It is further alleged in the complaint that despite repeated promises, payment of the aforesaid amount was not made to the complainant company and the goods supplied by the complainant came to be sold by the accused persons and the amount so released came to be used by them. Therefore, it is alleged that the accused persons have committed the offences punishable under Sections 403, 405, 409, 415, 418, 420 r/w Section 120 B and 114 of the Indian Penal Code. Being aggrieved and dissatisfied with the impugned FIR, the petitioners original accused nos. 3 to 6 have preferred the present Criminal Miscellaneous Application under Section 482 of the Code of Criminal Procedure to quash and set aside the impugned FIR.

3.0. Shri P.M. Thakkar, learned Senior Advocate for the petitioners has vehemently submitted that as such the petitioners have not committed any offences as alleged. It is submitted that as such the petitioners no. 1 to 3 herein original accused nos. 4 to 6 are concerned, they have already retired as partners of the original accused no.7 partnership firm as far as back on 31.12.1997 and even thereafter also the complainant company doing business with the accused no.7 partnership firm with remaining partners and therefore, it cannot be said that the petitioners no. 1 to 3 have committed the offences as alleged. It is further submitted that even the petitioner no.4 herein accused no.3 is concerned, he also retired as partner of the accused no.7 partnership firm on 31.3.2003 and even thereafter also complainant company continued the business with the accused no.7 partnership firm. It is further submitted that even so stated in the FIR after the accused no.3 retired as partner there was an agreement with the original accused nos. 1, 2 and 7 and thereafter business continued. Therefore, it is submitted that even the petitioner no.4 original accused no.3 has also not committed any offence.

3.1. Shri P.M. Thakkar, learned Senior Advocate for the petitioners has further submitted that as such the dispute is with respect to recovery of amount which is of a civil nature, which is tried to be converted into criminal dispute. It is submitted that basically impugned FIR is nothing but a suit for recovery of the amount. Therefore, it is submitted that the impugned FIR which is basically for recovery of the amount is nothing but an abuse of process of law and Court, which requires to be quashed and set aside in exercise of powers under Section 482 of the Code of Criminal Procedure.

3.2. Relying upon the decision of the Honble Supreme Court in the case reported in AIR 1968 700, it is submitted that merely because the amount due and payable is not paid that ipso facto does not amount to cheating. It is submitted that as held by the Honble Supreme Court that for making out the case under Sections 406, 408, 409 and 420 of the Indian Penal Code, it is to be established that the intention of the accused was from the very beginning dishonest and to cheat. It is submitted that in the present case as such there were business transactions since 1983 and till 1998 there was no dispute at all and even thereafter also there were business transactions. It is further submitted that, therefore, unless it is pointed out that there was a deception from the very beginning, there cannot be cheating. It is further submitted there is a difference between equitable breach of promise and breach of promise.

3.3. Shri P.M. Thakkar, learned Senior Advocate for the petitioners has relied upon the following decisions of the Honble Supreme Court in support of his prayer to quash and set aside the FIR, in exercise of powers under Section 482 of the Code of Criminal Procedure.

- (1). M.A.A. Annamalai vs. State of Karnataka reported in (2010) 8 SCC 524
- (2). Y.V. Joshi & Anr vs. State of Gujarat reported in (2009) 3 SCC 78.
- (3). Zandu Pharmaceuticals Works Ltd vs. Mohd. Sharaful Haque reported in (2005) 1 SCC 122
- (4). Hridaya Ranjan Prasad Verma and other vs. State of Bihar and Another reported in (2004) 4 SCC 168
- (5). Sunil Kumar vs. Escort Yamaha Motors Ltd and others reported in (1999) 8 SCC 468.

3.4. By making above submissions and relying upon the above decisions, it is requested to allow the present application.

4.0. Petition is opposed by Shri Nandish Chudgar, learned advocate for the respondent no.2 original complainant. It is submitted that the impugned FIR prima facie discloses non cognizable offences under Sections 403, 405, 409, 415, 418, 420 r/w Section 120 B and 114 of the Indian Penal Code, which are further required to be investigated and therefore, it is requested not to exercise the powers under Section 482 of the Code of Criminal Procedure and to quash and set aside the impugned FIR while exercising the power under Section 482 of the Code of Criminal Procedure. It is submitted that despite there were dues and even therefore, complainant suppose supplying the goods, thereafter on the promise given by the accused persons to repay and clear the outstanding dues and no their request to continue with the supply of the goods, complainant relied upon the said promise and continued the business with the accused persons and supplied the goods. Therefore, a clear case of breach of trust and the cheating has been made out. It is further submitted that as such goods supplied by the complainant has been accepted by the accused persons and they sold in market and they have realized amount which the accused persons have not paid to the original complainant company and have utilized the same for themselves. Therefore, it is submitted that a clear case is made out against the accused persons for the offences alleged. Therefore, it is requested to dismiss the present petition.

4.1. Shri Chudghar, learned advocate for the respondent no.2 original complainant has relied upon the following decisions of the Honble Supreme Court, in support of his request to dismiss the

present petition and not to exercise the powers under Section 482 of the Code of Criminal Procedure.

(1). Devender Kumar Singla vs. Baldev Krishan Singla reported in(2005) 9 SCC 15.

(2). Rajesh Bajaj vs. State of NCT of Delhi and Ors reported in (1999) 3 SCC 259

(3). M/s. Medchl Chemicals & Pharma Pvt. Ltd vs. M/s. Biological E. Ltd & Ors reported in AIR 2000 SC 1869.

5.0. Shri Rawal, learned APP has supported the complainant by submitting that the allegation and averment in the FIR prima facie discloses non cognizable offences which are required to be further investigated and therefore, it is requested to dismiss the present application.

6.0. Heard the learned advocates for the respective parties at length. At the outset, it is required to be noted that there were business relation with the complainant and the original accused no.7 partnership firm since 1983 and the original accused no.7 partnership firm was appointed as agent / commission agent for Nylon 6 goods. It appears that between 1983 to 1998 there was no grievance at all and the business run smoothly. It appears that thereafter, there were outstanding dues due and payable by the accused no.7 partnership firm towards goods sold and supplied by the complainant company and according to the complainant as on 1.4.2005 a sum of Rs. 3,98,31,000/ was due and payable towards principal and Rs. 1,04,00,000/towards interest i.e. in all Rs.5,02,31,000/, which has not been paid by the accused persons despite the various promises and therefore, it is alleged that the accused persons have committed the offences under Sections 403, 405, 409, 415, 418, 420 r/w Section 120 B and 114 of the Indian Penal Code.

7.0. It is required to be noted that so far as petitioner nos. 1 to 3 herein original accused nos. 4 to 6 are concerned, they were the partners of the original accused no.7 partnership firm who have retired on 31.12.1997. It is required to be noted that during the period between 1.4.1994 to 31.12.1997 there was a total sale of Rs.7158.08 lacs against which the payment was made for an amount of Rs.7137.92 lacs. Therefore, as on 31.12.1997 there was outstanding dues of Rs.20.16 lacs only. It is also required to be noted that thereafter the business continued with the remaining partners of the accused no.7 partnership firm and between 1.4.1998 to 31.3.1999 there was a sale for an amount of Rs.1359.38 lacs against which total payment was made for an amount of Rs.1361.10 lacs. Therefore, as on 31.3.1999 Rs.1.72 lacs was paid in excess. Even thereafter also, the business continued with the remaining partners of the accused no.7 partnership firm and there was a sale for Rs.2108.86 lacs during the period between 1.4.999 to 31.3.2003 and during the aforesaid period the payment was made for an amount of Rs.1980.02 lacs. Therefore, even thereafter the petitioners nos. 1 to 3 original accused nos. 4 to 6 retired on 31.12.1997, the business continued with the remaining partners

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and the accused no.7 partnership firm and as stated above till the petitioner nos. 1 to 3 continued as partner i.e. 31.12.1997 there was no dispute at all, it cannot be said that the petitioner nos. 1 to 3 have committed the offences as alleged under Sections 403, 405, 409, 415, 418, 420 r/w Section 120 B and 114 of the Indian Penal Code.

8.0. From the aforesaid and considering the fact that there were business relation since 1983 and till 1998 there was no grievance /dispute at all, for mere non payment of subsequent amount, petitioner nos. 1 to 3 cannot be held liable for the same and therefore, the impugned FIR is nothing but an abuse of process of law and Court so far as the petitioner nos.1 to 3 hereinoriginal accused nos. 4 to 6 are concerned, as it cannot be said that they have committed any offence as alleged for the offences under Sections 403, 405, 409, 415, 418, 420 r/w Section 120 B and 114 of the Indian Penal Code. Therefore, it appears to the Court in exercise of powers under Sections 482 of the Code of Criminal Procedure to quash and set aside the impugned FIR so far as petitioner nos. 1 to 3 original accused nos. 4 to 6 are concerned.

9.0. Now, so far as petitioner no.4original accused no.3 is concerned, though he has retired as partner in the month of March 2003, it is alleged in the FIR that he is the main person in the partnership firm and there were business dealings with him and that even for the period prior to 2003 when supply of goods were stopped he requested to sell the goods and continue the business by giving promises that outstanding dues will be cleared and on those promises despite the earlier outstanding, it is alleged that the complainant company continued the business and supplied the goods. It appears from the statement of account supplied that during the period between 1.4.1999 to 31.3.2003 and as on 31.3.2003 there was a outstanding of Rs. 128.84 lacs. Therefore, considering the above and the necessary allegation and averments made against the original accused no.3petitioner no.4 herein, it appears to the Court that this is not fit case to quash and set aside the impugned FIR in exercise of powers under Section 482 of the Code of Criminal Procedure. But for the promises given by the petitioner no.4 hereinoriginal accused no.3 herein to clear the outstanding dues, the complainant company would not have continued the business with the partnership firm and would not have supplied the goods thereafter. Therefore, in the facts and circumstance of the case, it appears to the Court that no case is made out to quash and set aside the impugned FIR so far as petitioner no.4original accused no.3 is concerned. Petitioner no.4 hereinoriginal accused no.3 seems to be the main persons dealing with the business of the accused no.7 partnership firm and looking to the specific allegations and averments made against him, no case is made out to quash and set aside impugned FIR in exercise of powers under Section 482 of the Code of Criminal Procedure.

10.0. Now, so far as decisions of the Honble Supreme Court relied upon by the learned advocate for the petitioner no.4original accused no.3 referred to hereinabove, on considering the same, it appears that on facts the said decisions would not be of any assistance to the petitioner no.4 hereinoriginal accused no.3. As stated above, there were promises given by the petitioner no.4 herein original accused no.3 to clear the outstanding and on that he requested to supply the goods and relying upon the said promises, the complainant

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company supplied the goods. Therefore, on facts, the aforesaid decisions would not be of any assistance to the petitioner no.4.

11. In view of the above and for the reasons stated above, application succeed in part. The impugned FIR being CR.No. I183 of 2005 registered at Chhani Police Station, Vadodara is hereby quashed and set aside so far as petitioners no.1 to 3 original accused no. 4 to 6 are concerned and rule is made absolute to the aforesaid extent so far as petitioner nos. 1 to 3 is concerned. Present application is dismissed qua petitioner no.4original accused no.3 is concerned and rule is discharged qua the petitioner no.4 herein original accused no.3 is concerned.

Petition dismissed.

