

(2011) 09 BOM CK 0192

In the Bombay High Court

Case No : Criminal Application No. 3375 of 2011

Gurmelsing Gajesing Nehra and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2012) BomCR(Cri) 353

Hon'ble Judges : Joshi A.R., J; Joshi A.H., J

Bench : Division Bench

Advocate : Vijay Sharma, for the Appellant; S.D. Shelke, Assistant Public Prosecutor, for respondent No. 1/State, for the Respondent

Final Decision : Dismissed

Judgement

Joshi A.H., J.—Heard learned Advocate Mr. Vijay Sharma for the applicants and learned APP for the State. The Applicants have approached this Court for quashing of F.I.R. lodged by respondent No. 2.

2. According to the applicants, it is a simple and plain case of sale of goods and alleged failure to pay the consideration amount and hence, no offence, whatsoever as alleged by the complainant, is made out against them.

3. Admittedly, goods are supplied to the applicants from time to time, those were sold and according to even the complainant, some amount was paid from time to time. According to the complainant, due to failure to pay for the goods sold by the accused, they have committed criminal breach of trust.

4. Learned Advocate for the applicants places reliance on the judgment of the Supreme Court reported in 2011 DGLS (soft) 523 : 2011 STPL (Web) 543 SC in the matter of [Joseph Salvaraj A. Vs. State of Gujarat and Ors.).

5. We have perused the judgment and we find that the proposition that the intention of cheating has to be in the beginning to constitute the offence of

cheating. This proposition cannot be a matter of controversy.

6. In the present case, as we have noted that the transaction between the complainant and the applicants is in the nature of entrustment of goods by the complainant for sale to the applicants and according to the complainant, the applicants have failed to account for and pay the sale proceeds.

7. We find from pleadings that the description contained in the complaint aptly and succinctly narrates the ingredients of commission of offence, which discloses the content that:

(a) The complainant, a farmer, had sent the goods and the applicants have admittedly received those goods.

(b) The applicants have paid only part of the proceeds and balance is due.

(c) The applicants have committed breach of trust due to appropriation of sale proceeds instead of paying/making over those to the complainant.

(d) Applicants deny that there are any dues however, it is a matter to be concluded after investigation and enquiry.

8. Perusal of the complaint adequately discloses that it is not a case of sale of goods, but a case, where goods were entrusted to the applicants for sale and the applicants have committed breach of trust by failing to account for.

9. As we learn from various reported judgments, and in particular:

(1) (State of Haryana Vs. Bhajan Lal)², 1990 DGLS (soft) 703 : 1992 Supp.(1) S.C.C. 335;

(2) (M/s. Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate and Ors.)³ 1998(5) Bom.C.R. 426(S.C.) : 1997 DGLS (soft) 1339 : 1997 DGLS (Cri.) soft 340 : AIR 1998 S.C. 128:

(3) (Joseph Salvaraj A. Vs. State of Gujarat and Ors.), 2011 DGLS (soft) 523 : 2011 STPL (Web) 543 SC;

(4) (Padal Venkata Rama Reddy @ Ramu Vs. Kovvuri Satyanarayan Reddy & amp Ors.)⁴, 2011 DGLS (soft) 585, Criminal Appeal No. 1499/2011 decided on 29.7.2011; the ratio decidendi.

10. The propositions as emerge from perusal of these precedents, are condensed as follows:

(a) Court's prima facie satisfaction must be based only on the allegations made in the complaint taking them to be correct.

(b) At this stage, i.e. Scrutiny of complaint for quashing, the Court does not have jurisdiction to examine the correctness or otherwise of the allegations.

(c) High Court is not supposed to embark upon the enquiry whether the

allegations in FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations.

(d) When exercising jurisdiction u/s 482 of Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of the accusation would not be sustained.

11. In the result, we conclude observing that:

(a) No one can be allowed to shut the doors of criminal justice system at the very threshold based on ingenious submissions and a fobia of being dragged to the draconian field of criminal Law.

(b) In order to shut down the doors of criminal law enforcement system and close the doors of investigation by quashing the FIR, it has to be shown that it is a gross case of abuse of process of law and it has to be shown that even on bare reading of complaint and bare perusal of material, which complainant relies, and even in absence of deeper probe, the ex facie falsity and lack of tenability of the complaint is manifest.

(c) The baselessness of complaint and want of strength with contents have to be vivid like a view in day light for enabling the Court to quash the FIR.

(d) Bare perusal must sound the humming of "injustice" to the persons named as accused and the "complaint being aimed at vexatious-ness" than real quest for justice.

(e) The complainant cannot be expected to be expert in legal drafting. The complaint is not expected to be an encyclopedia to conform to geometric or arithmetic precision and accuracy. A complaint is not expected to be a printed book, rather it has to be like a lay person's manuscript.

12. On facts, we conclude that we find the offence of mis-appropriation is being described in the complaint. No interference is therefore called for. The petition is dismissed.