

**(2022) 09 BOM CK 0136**

**In the Bombay High Court**

**Case No :** Criminal Application (Appeal) No. 506 Of 2022

Manish

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

**Date of Decision :** 27-09-2022

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 156(3), 250, 482  
Indian Penal Code, 1860 — Section 415, 420

**Citation :** (2022) 09 BOM CK 0136

**Hon'ble Judges :** Manish Pitale, J;Valmiki Sa Menezes, J

**Bench :** Division Bench

**Advocate :** S. S. Sitani, A. S. Fulzele, H. R. Gadhia

**Final Decision :** Dismissed

## Judgement

Manish Pitale, J

1. Admit. Heard finally with the consent of the learned counsel appearing for the rival parties.

(2) The applicant is seeking to invoke inherent power of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), for quashing First Information Report (FIR) No. 80/2022, dated 11/02/2022, registered at Police Station Lakadganj, Nagpur, for offence under Section 420 of the Indian Penal Code, 1860 (IPC). The aforesaid FIR stood registered in pursuance of order dated 07/12/2021, passed by the Judicial Magistrate First Class (JMFC) Nagpur, on an application filed by the non-applicant No.2 under Section 156(3) of the Cr.P.C.

(3) The grievance of non-applicant No.2 was that the applicant, having projected himself as a reputed, trustworthy and creditworthy party, being proprietor of a proprietary concern M/s. S. B. Traders, had approached the non-applicant No.2, proprietor of M/s. Mittal Energies of India, for purchase of coal. It was agreed between the parties that non-applicant No.2 would supply coal to the applicant and raise invoices for which the credit period would be 15 days from the date of

the invoice. According to the non-applicant No.2, initially the applicant did make some payments, but thereafter, huge amounts remained to be paid. As a consequence, on 06/03/2019, the non-applicant No.2, issued a notice to the applicant stating the details of the outstanding amounts and thereupon claimed payment of Rs.76,82,883/- [Rupees Seventy Six Lakhs Eighty Two Thousand Eight Hundred and Eighty Three only] along with interest from the applicant within 15 days of the said notice.

(4) In this backdrop, on 23/07/2020, an agreement was executed between the parties, whereby the applicant specifically agreed to a schedule of payment, so as to discharge the entire outstanding amount payable to the non-applicant No.2. It was agreed that between 01/08/2020 and 31/01/2021, the applicant would make payments in installments, so that total amount of Rs.80,00,000/-[Rupees Eighty Lakhs only] would be paid to the non-applicant No.2. In this agreement, it was specifically agreed by the applicant that the entire amount would have to be paid by 31/01/2021, failing which the non-applicant No.2, would be free to institute civil and criminal proceedings against the applicant.

(5) It was the case of the non-applicant No.2 that the applicant made payment of only Rs.5,00,000/- [Rupees Five Lakhs only], as per the said agreement and thereafter failed to pay any further amount. The non-applicant No.2 was constrained to pursue the matter with the applicant, but when no positive response was forthcoming, the non-applicant No.2 was constrained to approach the Police Station at Lakadganj on 28/06/2021, for registration of offence of cheating against the applicant. As the Police did not take any action, the non-applicant No.2 forwarded the complaint to the Commissioner of Police, Nagpur and eventually the non-applicant No.2 had to approach the JMFC, Nagpur under Section 156(3) of the Cr.P.C. As noted above, on 07/12/2021, the JMFC, Nagpur, allowed the application and directed registration of FIR, upon finding that prima facie cognizable offence was made out against the applicant. In pursuance thereof, FIR dated 11/02/2022, came to be registered against the applicant.

(6) The applicant filed the present application wherein on 11/04/2022, this Court issued notice and granted limited interim relief to the effect that the investigation would continue, but charge-sheet was not to be filed without the leave of this Court. Upon service of notice, the non-applicant No.2 appeared through counsel and the non-applicant No.1 State was represented by learned Assistant Public Prosecutor (APP).

(7) Mr. Sitani, learned counsel for the applicant submitted that in the present case, a purely commercial and civil dispute between the parties was deliberately being given the colour of criminality by the non-applicant No.2, as an arm twisting tactic to put pressure on the applicant. It was submitted that even if certain amounts were outstanding and payable to the non-applicant No.2, appropriate civil proceedings could be initiated and that therefore, the FIR deserved to be quashed. It was submitted that even if the allegations levelled by the non-applicant No.2 were to be taken on face value, not even a prima facie

case was made out for demonstrating ingredients of the offence of cheating and that therefore, the present application deserved to be allowed.

(8) Reliance was placed on judgments of the Hon'ble Supreme Court in the case of *Mitesh Kumar J. Shah vs. State of Karnataka and ors.*, 2021 SCC OnLine SC 976, *Prof. R. K. Vijayasathya and anr. vs. Sudha Seetharam and another*, (2019) 16 SCC 739, *Ajay Mitra vs. State of M. P. and others*, (2003) 3 SCC 11 and judgment of this Court in the case of *Avdhesh Harichand Jaiswal vs. State of Maharashtra and another* (judgment and order dated 17/11/2021 passed in Criminal Application (APL) No. 196 of 2020).

(9) On the other hand, Mr. Gadhia, learned counsel appearing for non-applicant No.2 submitted that a given set of circumstances could give rise to both civil and criminal proceedings. It was submitted that merely because the grievances of the non-applicant No.2, arise out of commercial transactions between the parties, it could not be said that no criminal liability was incurred by the applicant. It was submitted that, as long as ingredients of the offence of cheating were prima facie made out by the material on record, this Court ought not to interdict the process of investigation, filing of charge-sheet and the applicant facing trial. Emphasis was placed on the definition of the offence of cheating under Section 415 of the IPC and it was submitted that the conduct of the applicant has discernible from the material on record, clearly demonstrating the ingredients of dishonest inducement on the part of the applicant, thereby cheating the non-applicant No.2.

(10) Reliance was placed on the judgments of the Hon'ble Supreme Court in the cases of *Rajesh Bajaj vs. State NCT of Delhi and others* (1999) 3 SCC 259, *Trisuns Chemical Industry vs. Rajesh Agrawal and others*, (1999) 8 SCC 686 and *K. Jagdish vs. Udaya Kumar G. S. and another*, (2020) 14 SCC 552.

(11) Mr. Fulzele, learned APP appeared on behalf of the non-applicant No.1 State and he relied upon the reply filed in the present application, wherein it was stated that the investigation revealed that the applicant had mortgaged most of the properties belonging to him and his relatives and that release deeds were also executed in respect of certain properties. It was submitted that the investigation did reveal the ingredients of the offence of cheating defined under Section 415 of the IPC.

(12) Having heard the learned counsel for the rival parties, the question that arises for consideration before us is, as to whether the material available on record demonstrates at least prima facie that the criminal proceedings initiated against the applicant in the form of registration of FIR for offence under Section 420 of the IPC deserve to be continued or that such proceedings deserve to be terminated at this stage itself. The parameters for exercise of inherent power of this Court under Section 482 of the Cr.P.C. are by now well settled and elaborated upon in a series of judgments of the Hon'ble Supreme Court, starting from *State of Haryana vs. Bhajanlal*, 1991 Supp (1) SCC 335.

(13) The Hon'ble Supreme Court has also deliberated upon the tendency of

giving colour of criminality to purely commercial and civil disputes, for the reason that invoking civil remedies leads to a long wait for the aggrieved person to get appropriate relief. In the case of *M/s.Indian Oil Corporation vs. NEPC India Ltd. and others* 2006(6) SCC 736, in this context, the Hon'ble Supreme Court held as under :-

"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. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. 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. In *G. Sagar Suri vs. State of UP*, (2000) 2 SCC 636, this Court observed : (SCC p.643, para 8)

"It is to be seen if a matter, which is essentially of a 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 the 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."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant."

(14) Even earlier, in the case of *G. Sagar Suri and another vs. State of U. P.* , (2000) 2 SCC 636, in this context, the Hon'ble Supreme Court held as follows :-

"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 the 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 said position of law has been followed in the judgments on which the learned counsel for the applicant has pressed reliance i.e. *Mitesh Kumar J. Shah vs. State of Karnataka* (supra) and *Prof.R. K. Vijayasarathy vs. Sudha Seetharam* (supra). On facts, in both the cases, the Supreme Court accepted the contentions raised on behalf of the accused and quashed the criminal proceedings i.e. FIR and the charge-sheet. Even in the case of *Ajay Mitra vs. State of M. P.* (supra), after analyzing the ingredients of the offence of cheating, defined under Section 415 of the IPC and punishable under Section 420 thereof, the Hon’ble Supreme Court quashed the FIR registered against the accused person. Similarly, a Division Bench of this Court in the case of *Avdhesh Harichand Jaiswal vs. State of Maharashtra* (supra) found that essential ingredients of the offence punishable under Section 420 of the IPC were not even prima facie made out and accordingly, the FIR and the charge-sheet registered against the accused were quashed.

(16) There can be no doubt about the fact that criminal proceedings cannot be used as a shortcut by a person who claims return of monies from the opposite party. Merely because initiation of civil proceedings and pursuing the same has unfortunately become a time consuming process in our legal system, initiation of criminal proceedings on the same set of facts cannot be permitted as an arm twisting tactic or as a process to expeditiously bring the opposite party to the negotiation table. If the essential ingredients of the offence of cheating are not even prima facie made out, on the basis of the facts as claimed by the aggrieved party, criminal proceedings cannot be continued. In this regard, the ingredients of the offence of cheating assume significance and for this purpose, a perusal of Section 415 of the IPC becomes necessary, which 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”.”

(17) The illustrations appended to the above quoted provision are significant and in the cases of *Rajesh Bajaj vs. State NCT of Delhi* (supra) and *K. Jagdish vs. Udaya Kumar G. S.* (supra) reference has been made to illustration ‘(f)’ which pertains to an aspect of cheating, which reads as follows :-

“(f) A Intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.”

(18) The essential ingredients of the offence of cheating, on a bare reading of the above quoted Section 415 of the IPC, are inducing dishonestly or fraudulently or deception practiced by one person against the other, so that the person so deceived or induced delivers any property to the other. It also includes dishonestly inducing or deceiving a person from doing anything, which he would not have done or omitted from doing if he were not so deceived or induced.

(19) The material available on record pertaining to the grievance of the non-applicant No.2 shows that he agreed to sell coal to the applicant on the basis that the applicant projecting himself to be a reputed, trustworthy and creditworthy party. The material shows that initially some part of the payment was indeed made by the applicant. But, thereafter, despite receiving coal from the non-applicant No.2, as alleged in his complaint, the applicant did not make any payments, as a consequence of which, a huge amount became due on the applicant.

(20) The notice dated 06/03/2019, issued by the non-applicant No.2, to the applicant indicates the extent of the outstanding amount and it is crucial that after receiving the said notice, the applicant specifically entered into an agreement with the non-applicant No.2, on 23/07/2020, wherein the extent of outstanding amount being Rs.79,82,883/- [Rupees Seventy Nine Lakhs Eighty Two Thousand Eight Hundred and Eighty Three only], was stated and thereafter, the parties agreed that the applicant would pay a total amount of Rs.80,00,000/- [Rupees Eighty Lakhs only] between 01/08/2020 to 31/01/2021. The first installment was for Rs.5,00,000/- [Rupees Five Lakhs only] and thereafter there were 05 equal installments of Rs.15,00,000/- [Rupees Fifteen Lakhs only] each, recording that the total amount of Rs.80,00,000/- [Rupees Eighty Lakhs only] would be paid in this manner to the non-applicant No.2 by 31/01/2021. It is significant that this notarized document shows signatures of the applicant and non-applicant No.2, as well as their thumb impressions and it is also clearly stated in the said document that by projecting himself as a reputed, trustworthy and creditworthy party, the applicant had induced the non-applicant No.2 to enter into the contract of sale of coal.

(21) The aforesaid material does indicate that, as per the allegations made by the non-applicant No.2, not only did the applicant induce him into entering into a contract for sale of coal, but when huge outstanding amount became due, he further induced the non-applicant No.2 to enter into the aforesaid agreement to discharge the liability, specifying the dates when amounts would be repaid in installments. The non-applicant No.2 has alleged that only Rs.5,00,000/- [Rupees Five Lakhs only] were paid and the entire balance of Rs.75,00,000/- [Rupees Seventy Five Lakhs only], which was to be paid in 05 equal installments of Rs.15,00,000/- [Rupees Fifteen Lakhs only], was not paid by the applicant.

(22) The allegations made by the non-applicant No.2 taken as it is, prima facie divulge the ingredients of the offence of cheating, defined in Section 415 of the IPC and punishable under Section 420 thereof. The aspect of dishonest

inducement and deception from the initial stage and even at the stage of entering into subsequent agreement can be said to be prima facie discernible, upon accepting the allegations at this stage made by the non-applicant No.2 against the applicant. It cannot be said, in the facts of the present case, that a purely commercial dispute concerning the right of the non-applicant No.2 to recover amounts from the applicant was sought to be given a cloak of criminality by the non-applicant No.2.

(23) The judgments on which the learned counsel for the applicant has placed reliance are distinguishable on facts, because the Court therein found that business transactions had gone wrong, demonstrating that the grievances of the complainants therein were essentially of commercial and civil nature, and even prima facie the ingredients of the offence of cheating were not made out. Such is not the case in the present matter, even on a bare reading of the material on record. This is compounded by the reply filed on behalf of the non-applicant No.1 State, wherein it has been stated, on the basis of the investigation, that the applicant had already mortgaged most of the properties belonging to him, as well as his relatives to a particular bank and during the period between 2015 to 2021 release deeds were executed in respect of certain properties on behalf of the applicant. This prima facie gives an impression that the applicant, knowing full well about his financial position, had yet projected himself to the non-applicant No.2 as a creditworthy party for undertaking aforementioned transaction.

(24) Merely because the same set of facts alleged by the non-applicant No.2 could also give rise to civil proceedings against the applicant ought not to be a factor held against the non-applicant No.2 or in favour of the applicant, while considering the present application. It is in this context that the Supreme Court in the case of Pratibha Rani vs. Suraj Kumar (1985) 2 SCC 370 has observed that it is anathema to suppose that when a civil remedy is available, criminal prosecution is completely barred.

(25) In view of the above, we are of the opinion that in the facts of the present case, it could not be said that the non-applicant No.2 caused the FIR to be registered, only with a view to bring about pressure on the applicant, as an arm twisting tactic, for recovery of the amounts due from the applicant. We find that prima facie the ingredients of the offence defined under Section 415 of the IPC and punishable under Section 420 thereof, can be said to be made out and the criminal proceedings do not deserve to be nipped in the bud. No case is made out by the applicant for us to invoke our inherent jurisdiction under Section 482 of the Cr.P.C. in order to allow the present application.

(26) In view of the above, the application is dismissed.