

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO.1530 OF 2003

1. Abdus Salam Abdul Majid Ansari,
aged 56 years, Occ: Business.
2. Smt. Rizwana Abdus Salam Ansari,
aged 43 years, Occ: Household.
3. Davar Zafeer Abdus Salam Ansari,
aged 22 years, Occ: Student.

All residing at Plot No.6/C, 24 at
306, Lal Bahadur Shastri Marg,
Taximen's Colony, Kurla (West),
Mumbai-400 070.

.... Petitioners

- Versus -

1. M/s. Nilkamal Plastics Ltd.,
a limited company having its
administrative office at
Nilkamal House, Plot No.77-78,
Road No.13-14, M.I.D.C.,
Andheri (East),
Mumbai-400 093 through its
authorised signatory/constituted
Attorney Shri Naresh Lallubhai
Patel.
2. Union Territory of Dadra & Nagar

Haveli, through Senior Police
Sub-Inspector, Silvassa Police
Station, Silvassa, Dadra Nagar
Haveli.

3. Mr. Gavit (PSI),
attached to Silvassa Police
Station, Silvassa. Respondents

Shri Amin Solkar for the Petitioners.

Shri Harshad Ponda with Ms N. Mehta i/b M/s.

Nitya Sunil & Associates for Respondent No.1.

Ms A.S. Pai, Addl.P.P., for the State.

CORAM: R.M.S. KHANDEPARKAR &

R.S. MOHITE, JJ.

DATED: JULY 30, 2004

JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. Perused the records.

2. The petitioners seek to quash the complaint filed by the respondent No.1 being Criminal Case No.181/2003 in the Court of the Addl. Chief Metropolitan Magistrate, Dadra & Nagar Haveli at Silvassa as well as the order passed therein on 9-6-2003 under Section 156(3) of the Code of Criminal Procedure. The challenge is on the

ground that the complaint of the respondent No.1 being of criminal breach of trust and cheating, the petitioners having already cleared the dues in relation to the business dealings with the respondent No.1 during the period from February, 1994 to November, 1999 and there being no such business dealings done thereafter, there is no liability upon the petitioners of whatsoever nature and in case there is a breach of contractual obligation, it would be a civil liability and therefore neither criminal complaint was maintainable nor the order for investigation in exercise of powers under Section 156(3) of the Code of Criminal Procedure is warranted. Secondly, the challenge is on the ground that the fact that the Magistrate did not issue process on the complaint and referred the matter for investigation under Section 156(3) of the Code of Criminal Procedure and granted bail to the petitioner No.1 on the very first day itself, all these disclose non-application of mind by the learned Magistrate in ordering investigation and abuse of process of law on the part of the respondent No.1 in insisting for investigation in the matter.

3. Upon hearing the learned Advocates for the parties and perusal of the records, few facts relevant for the decision and revealed from the records are that the respondent No.1 had appointed the petitioners as the

distributors for the sale of their product in Mumbai during the period from 1994 to 1999. There was no formal termination of the business dealings, however, since 1999 there were no transactions effected between the parties. It is the case of the respondent No.1 that though there was no dealing upto February, 2002, thereafter the business firm of the petitioners, namely, M/s. Farhan Enterprises started purchasing furnitures from the respondent No.1 and during the period from 8-2-2002 to 21-3-2002, eighteen transactions were effected and consequently eighteen invoices-cum-challans were issued to the petitioners. All those supplies were made pursuant to the telephonic orders, without any written requisition and the goods were supplied from the factory preparing the invoices-cum-challans for delivery of those goods to the petitioners. It is their further case that the outward register in the factory, the excise return in RT-12 Forms, gate passes, etc., including the evidence regarding transportation abundantly establish the supply of goods to the petitioners during the relevant period. It is their further case that the correspondence between the parties from March, 2002 onwards also corroborates the said dealings. The petitioner No.1 issued cheques towards the payment of the amount due to the respondent No.1, but the cheque was dishonoured. on the other hand, the contention of the petitioners is that no purchases have

been made and, therefore, the petitioners do not owe any amount to the respondent No.1 and the cheques which have been stated to have been issued in favour of the respondent No.1 were obtained under duress and coercion, with the intervention of the police authorities at Silvassa. The allegations are seriously disputed on behalf of the respondents.

4. Undisputedly, the complaint filed by the respondent No.1 discloses various facts which sufficiently reveal the ingredients of the offences of the nature of criminal breach of trust and cheating and both the offences are cognizable. Once a complaint prima facie discloses cognizable offence, and considering the same the learned Magistrate having referred the same to the police for necessary investigation, there can be hardly any justification for interference in such an order passed by the Magistrate unless it is shown to be totally perverse. The contentions of the petitioners themselves clearly reveal that the complaint on the face of it, and in fact it does, discloses that the allegations therein, if established, can constitute the offence of criminal breach of trust and cheating and the same would obviously invite imposition of penalty under Sections 406 and 420 r/w Section 34 of the Indian Penal Code. Being so, neither any fault can be found with the order passed by the learned Magistrate nor the complaint

filed by the respondent No.1 disclose any infirmity in relation to the ingredients of Section 406 or Section 420 of the Indian Penal Code so as to justify interference in such complaint in writ jurisdiction.

5. Undoubtedly, the petitioners have alternative efficacious remedy and in case an appropriate chargesheet is filed against the petitioners, certainly the petitioners can raise all the points which are sought to be raised in this petition while answering such the chargesheet. Viewed from this angle also, there is no case made out for interference in the matter in writ jurisdiction.

6. The petition, therefore, fails and is hereby dismissed. The rule is discharged with no order as to costs.

7. Needless to say that in case such objections are raised, the Magistrate will have to decide the same in accordance with the provisions of law. We make it clear that we have not expressed any opinion on the point of absence of criminal liability in the facts of the case and all the contentions in that regard are kept open.

(R.M.S. KHANDEPARKAR, J.)

[7]

(R . S . MOHITE , J .)