

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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CRIMINAL WRIT PETITION NO. 1392 OF 2009

M/s. Agarwal International)
 A partnership firm registered under)
 Indian Partnership Act 1932 having its)
 earlier office at 16, Ground floor, Arun)
 Chambers, Next to A.C. Market, Tardeo,)
 mumbai 400 034, present office at 632,)
 6th floor, Arun Chambers, Tardeo,)
 Mumbai - 34, through its partner)
 Mr. Shyam Sunder Agarwal.).. Petitioner

vs.

1. State of Maharashtra)

2. Frisco International Private Limited)
 a company incorporated under)
 Companies Act, 1956, having its)
 office at Sub-Plot No.6 Plot No.11/12))
 Western Industrial Co-operative Ltd.)
 Opp. Seepz M.I.D.C. Andheri (E),)
 Mumbai 400 093.)

3. Samir Goenka)
 Director FRISCO International)
 Private Ltd., Sub-Plot No.6)
 Plot no.11/12, Western Industrial)
 Co-operative Ltd., Opp. Seepz MIDC,)
 Andheri (E), Mumbai 400 093.)

4. Shashi Sehgal,)
 authorized representative, FRISCO)
 International Private Ltd., Sub-Plot)
 No.6 Plot No.11/12, Western)
 Industrial Co-operative Ltd., Opp.)
 Seepz MIDC Andheri (E),)

Mumbai 400 093.

).. Respondents

Mr. P.D.Jain i/b. P.D.Jain & Co., Advocates, for the petitioner.

Smt. V.R.Bhosale, APP, for the respondent No.1 - State.

None for the respondent Nos. 2 to 4.

CORAM: J.H.BHATIA,J.

DATE : 19th July, 2010.

JUDGMENT:

1. Rule. Rule returnable forthwith. Heard the learned Counsel for the petitioner.

2. By order dated 17.3.2010, this Court had directed notice to the respondent Nos. 2 to 4 and had also directed that the notice shall indicate that the petition may be finally disposed of at the admission stage. The notice was served and the learned Counsel for the respondent Nos. 2 to 4 appeared and sought time. On 27.4.2010, on request by the learned Counsel for the respondent nos. 2 to 4, the matter was adjourned as a last chance. Thereafter also, on 15.6.2010, the matter was again adjourned on the request of the learned Counsel for respondent Nos. 2 to 4. Today, none appears for the respondent Nos. 2 to 4.

3. The petitioner had filed a complaint against the respondent Nos. 2 to 4 for the offence punishable under Section 420 read with Sec. 120-B IPC. It was

contention of the petitioner in the complaint that respondents. 2 to 4 had agreed to deliver certain goods to the petitioner on making payment of Rs.13 lakh. On that representation, the petitioner had made payment of Rs.13 lakh, but the goods were not supplied and when the petitioner insisted the respondents for supply, they contended that the said amount was adjusted against dues from one Mr. Inder of M/s. Parul Creation, with whom the petitioner had no concern. According to the petitioner, the respondent Nos. 2 to 4 had cheated him and made him to make payment of Rs.13 lakh, while they had no intention to supply the goods. The complaint was filed on 15.7.2005. Verification statement was also recorded. The complaint was supported by a number of documents. In view of the facts and circumstances, the learned Magistrate, 29th Court, Dadar, passed an order dated 2.3.2006 and directed N.M.Joshi Marg Police Station to carry out investigation under Sec.202 Cr.P.C. and to submit a report.

4. Later on, N.M. Joshi Marg Police Station submitted a report to the effect that the respondents/accused were located within the territorial jurisdiction of MIDC Police Station, at District Thane and therefore, the MIDC Police Station, Thane be directed to hold investigation under Sec.202 Cr.P.C. After the receipt of the said report, by order dated 30.1.2008, the learned Metropolitan Magistrate dismissed the complaint under Sec. 203 Cr.P.C. observing that it was a civil

dispute. That order was challenged by the complainant/petitioner before the Sessions Court by filing a revision application, but the revision application was rejected. Hence, this petition.

5. In view of the facts noted above, it appears that on 2.3.2006, when the first order was passed by the then Metropolitan Magistrate, Mr. R.T.Badge, he had considered the allegations made in the complaint, verification statement and the documents annexed with the complaint and had formed an opinion that it was necessary to get the matter investigated through police under Sec. 202 Cr.P.C. and accordingly, he passed the order. However, the N.M. Joshi Marg Police Station reported and informed the learned Magistrate that the accused were not situated in its jurisdiction and therefore, the MIDC Police Station, Dist. Thane may be directed to hold investigation under Sec.202 Cr.P.C. In view of this report, the only thing which was expected from the learned Magistrate was to direct the MIDC Police Station, Thane to hold investigation under Sec. 202 Cr.P.C. and to submit a report. Instead of that, the Metropolitan Magistrate, Mr. R.B.Agrawal, who had succeeded the earlier Magistrate, passed the impugned order dated 30.1.2008 dismissing the complaint under Sec.203 Cr.P.C.

6. Section 202 Cr.P.C. provides that any Magistrate, on receipt of a

complaint of an offence may postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. In the present case, the learned Magistrate had postponed issuance of process and had directed investigation by police under Sec. 202 Cr.P.C. Section 203 Cr. P.C. provides that if, after considering the statements on oath, if any, of the complainant and of the witnesses and the result of the enquiry or investigation, if any, under Sec.202, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint and in every such case he shall briefly record his reasons for so doing. From this, it is clear that if the Magistrate, while postponing issuance of process, decides not to hold enquiry himself and to direct the police to make investigation, he is expected to wait for the report of the investigation and under Sec. 203, the Magistrate has to form an opinion on the basis of not only the statements on oath of the complainant and witnesses, but also the result of such investigation under Sec. 202 Cr.P.C. before forming an opinion as to whether there is or there is no sufficient ground for proceeding. Once the Magistrate has passed an order under Sec. 202 Cr. P.C., and directed the police to hold investigation and submit report, the Magistrate had no choice but to wait for that report and to consider that report before any further order could be passed either

under Sec. 203 or under Sec.204 Cr.P.C. The Magistrate could not revoke the earlier order directing police to hold the investigation. In the present case, the earlier learned Magistrate had directed the police to hold investigation under Sec. 202, but that investigation was not made by N.M.Marg Police Station on the ground that it did not have territorial jurisdiction and that the territorial jurisdiction is that MIDC Police Station, Thane. This could not be treated as a report of the police on investigation. It was only a request by the police to transfer the investigation from N.M.Joshi Marg Police Station to MIDC Police Station, Thane District, which has the territorial jurisdiction. In such circumstances, only option which was available before the Magistrate was to transfer the investigation to MIDC Police Station, District Thane. It was not the stage when the Magistrate could form an opinion about existence of sufficient grounds to proceed further or otherwise. However, it appears that the successor Magistrate straightway dismissed the complaint holding that the dispute is of civil nature and thus practically, he has reviewed and revoked the earlier order passed by his predecessor under Sec.202 Cr.P.C. The learned Magistrate had no power to review and revoke the earlier order.

7. Before dismissing the complaint under Sec.203, in the given circumstances, the Magistrate had to consider the police report on

investigation, but as no such report was available, he could not have come to conclusion that there was no substance to proceed further.

8. In view of the legal position and facts, the impugned order dated 30.1.2008 dismissing the complaint under Section 203 Cr.P.C. is clearly illegal and is liable to be set aside. It appears that the Sessions Court also did not consider this aspect of the matter before rejecting the revision application.

9. For the aforesaid reasons, the petition is allowed and the impugned order dated 30.1.2008 passed by the Metropolitan Magistrate, 29th Court, Dadar, dismissing the complaint is hereby set aside. The Criminal Case No. 192/Misc./2005 is hereby restored to the file of the Metropolitan Magistrate, 29th Court, Dadar with direction to direct the concerned police station to hold investigation under Sec.202 Cr. P.C. and submit a report as per the earlier order dated 2.3.2006. The Magistrate shall proceed with the matter after receipt of this report from the police as per law.

Rule made absolute accordingly.

(J.H.BHATIA,J.)