

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CRIMINAL APPELLATE JURISDICTION

## CRIMINAL APPLICATION NO.4113 OF 2006

Captain Terence James Verma .. Applicant  
*Versus*  
Raymond Limited and Others .. Respondents

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Mr.S.C.Naidu with Mr.T.R.Yadav i/b C.R.Naidu & Co.for the applicant.

Mr.Hemang A. Jariwala with Bina J. Jariwala i/b Auroma Law for the respondent no.1.

Ms.S.S.Kaushik, APP for the Respondent State.

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**CORAM : ABHAY M. THIPSAY, J.**

**DATED : 28<sup>th</sup> NOVEMBER 2014.**

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**ORAL ORDER:-**

1 The applicant is the accused in Regular Criminal Case No.163 of 2006, pending before the Chief Judicial Magistrate, Ratnagiri. The case arises on a complaint filed by one Sudhir Gujran, Deputy Manager of the respondent no.1 – Raymond Limited – a Company. incorporated under the Companies Act.

2 By this application invoking the inherent powers of this Court, the applicant is challenging the order issuing process, as passed by the learned Chief Judicial Magistrate, Ratnagiri on 5<sup>th</sup> October 2006, requiring the applicant to appear and answer to the charge of offences punishable under section 418 and 420 of the

IPC. In the alternative, the applicant is praying that the case be transferred to the Court of a Magistrate at Mumbai, as the Chief Judicial Magistrate, Ratnagiri has no territorial jurisdiction to entertain the complaint, and try the alleged offences.

3 I have heard Mr.S.C. Naidu, learned counsel for the applicant. I have heard Mr.Hemang Jariwala, learned counsel for the respondent no.1. I have heard Mrs.S.V.Gajare, learned APP for the State.

4 The applicant is a trained and qualified pilot who had served the Indian Air Force as a '*Jet Fighter and Bomber Pilot*' for about 22 years before opting for a premature retirement in the year 1994.

5 The respondent no.1 Company appointed him as a trainee Commander in its aviation division on 1<sup>st</sup> February 2003. The applicant left the employment of the respondent no.1 Company in August 2006. The complaint in question, came to be filed on 15<sup>th</sup> December 2006, as aforesaid, by the Dy. Manager, Secretarial Administration, of the respondent no.1.

6 With the assistance of the learned counsel for the parties, I have gone through the application, and the annexures thereto. The learned counsel have relied upon a number of decisions rendered by the Supreme Court of India in support of their respective contentions. I have taken into consideration the propositions laid down in the pronouncements of the Supreme Court relied upon by the learned counsel.

7 The version of the complainant, as appearing in the complaint, in brief, may be stated thus :-

That the respondent no.1 - Raymond Limited - carries on various industrial and business activities all over India, including carriage of passengers, or cargo for hire; and that for this purpose, the Raymond Limited (hereinafter referred to as 'the Company') has maintained a fleet of various types of aircrafts and helicopters, and has also employed various officers and staff pilots to manage the activity and fly the planes. The Company used to impart special training to the pilots by sending them abroad at the expenses of the company. In return, such pilots would have to assure and give undertaking, and execute an indemnity bond in favour of the company, that they would serve the company for atleast seven years. The Company also used to pay special allowance, residential accommodation, and other perquisites to such pilots. That, in response to the company's advertisement for the post of Captain, the accused had made an application on 29<sup>th</sup> April 2002. After holding a meeting with the accused wherein the terms and conditions of service were explained to him, he was appointed as 'trainee Commander' with effect from 1<sup>st</sup> February 2003. The accused was informed before appointing him that he would be required to undergo training abroad, and that the Company would bear the expenses, provided the accused assured to the Company that he would serve the Company for minimum 7 years. The accused had assured to the Company that he was desirous of going abroad for training, and if he was to be sent abroad for training at Companies cost, he would serve the

company for atleast 7 years after return. The accused had agreed to execute an indemnity bond as per the requirement of the company.

8 After the appointment of the accused, he was sent for training to CAE, Simufleet, USA. The Company incurred an expense of Rs.10,30,925/- for the training and other additional expenses, totally aggregating to Rs.26,45,009/-, in that regard. That the accused was expected to issue six months notice before tendering resignation, but in the year 2006, the accused without obtaining permission from the Officers of the Company, remained absent from duties, and left the station. Finally, he submitted his resignation on 22<sup>nd</sup> August 2006. Thereafter, an intra-office inquiry was held by the Company, in which it was revealed that the accused had not submitted the indemnity bond as required, and as agreed upon, inasmuch as the indemnity bond was only signed by him, though as per the recitals therein, it was also executed by the indemnifier – one Prem Shankar named therein. That, the accused was made aware in the meeting that had taken place before his appointment in the Company; that he would have a chance to go abroad for further training at Company's cost only if he assured that he would serve the Company for a minimum period of 7 years.

9 It is alleged in the complaint that the accused had no genuine desire to serve the Company, but only in order to have a training abroad at Company's cost, accused made a false representation to the Company, and induced the Company to give him job, and send him abroad at Company's cost. That (dishonest)

intention of the accused was further clear from his not getting the indemnity bond signed by the indemnifier – one Shri Prem Shankar. That, the accused had cheated the company by making false representations, and that the accused knew, or had reason to know, that by his act of cheating, he was likely to cause wrongful loss to the Company. That he also knew, or had reason to know that under the contract of employment, he was duty bound to protect the interest of the Company, but still in utter disregard to the terms of the contract, directions of the superiors and those of even the Chairman and Managing Director of the Company, the accused left the job, causing wrongful loss to the company. That, the complaint was, therefore, being filed as per the authorization given to the said Gujran by the Company.

10 It is contended by Mr.Naidu, the learned counsel for the accused that the complaint on a bare reading thereof, does not disclose any offence whatsoever. According to him, the complaint only reveals a civil dispute between the parties. He also contended that, in any case, the Chief Judicial Magistrate, Ratnagiri had no territorial jurisdiction to entertain the complaint and try the alleged offence. It is submitted that in the event of the Court coming to a conclusion that this was not a fit case for quashing the order issuing process, the case be transferred to a Court of Magistrate in Mumbai.

11 The learned counsel for the complainant, on the other hand, contended that the Magistrate at the stage of issuance of process was not expected or required to meticulously examine the averments made in the complaint for the purpose of forming an

opinion as to whether the accused was likely to be convicted of the alleged offences. It was emphasized that the Magistrate has to form only a *prima facie* opinion about sufficiency of grounds for 'proceeding' and not sufficiency of grounds for 'conviction'. It is contended that the complaint did disclose the ingredients of the alleged offences, and once the Magistrate was satisfied about sufficiency of grounds for proceeding against the accused, the order passed by the Magistrate was not liable to be interfered with, except in exceptional circumstances. The learned counsel for the parties have relied upon the authoritative pronouncements of the Apex Court in support of their respective contentions.

12 In the view that I am taking, it is not necessary to discuss the decisions on which reliance has been placed by the learned counsel for the parties. It is not necessary to discuss what these judgments lay down as the legal position is well settled. Certainly, only *prima facie* satisfaction of the Magistrate, is needed at the stage of issue of process and a deeper or meticulous scrutiny of the matter with the object of finding out whether the case is likely to result in conviction or not, is not called for at that stage. Further, that the Magistrate has a certain amount of discretion in the matter of issue of process, is also undisputed and that once the Magistrate has exercised his discretion based on the materials before him, his order is not liable to be interfered with by the Superior Courts, is also not in dispute.

13 What, however, cannot be overlooked is that if the allegations in complaint are of such a nature that they only disclose the existence of a civil dispute, it would not be proper for

the Magistrate to issue process merely because a criminal color is sought to be given to the whole dispute by the complainant. If in such cases i.e. where the dispute on a fair reading of the complaint appears to be of a civil nature, the order issuing process is liable to be quashed.

14 The learned counsel for the complainant emphasized that civil liability and criminal liability, both can co-exist in a given case, and merely because there is a civil dispute between the parties, the element of criminality in the same dispute, cannot be ruled out. He contended by placing reliance on some pronouncements of the Supreme Court of India that even in cases of commercial transactions or breach of contractual obligations, elements of cheating, can very well be present, and that in such cases, the Magistrate would be justified in issuing process against an accused. Since I do not dispute this proposition of law, as put forth, it is not necessary to make any reference to the authorities cited by the learned counsel for the complainant.

15 Though it would be open for a party to pursue civil remedies and criminal remedies, both arising out of a given set of facts, and though only *prima facie* satisfaction of the Magistrate about sufficiency of grounds for proceeding against an accused, is required at the stage of issue of process, what cannot be disputed is that the complaint on its fair reading, must disclose ingredients of a criminal offence. If on a fair reading of the complaint, no ingredients of such an offence are disclosed, then obviously, process cannot be issued, and the complaint which does not disclose any offence, would be required to be dismissed.

16 In the light of this position, if the present complaint is examined, it clearly spells out a civil – and only civil – dispute between the parties.

17 It would be appropriate to refer to some of the averments made in the complaint. In paragraph nos.3, 4, and 5 of the complaint, information about the company, and that the accused applied for the post of Captain, pursuant to the advertisement given by the Company, is mentioned. In paragraph no.6 and 7 of the complaint, it is mentioned that the accused was informed that the Company would bear the expenses of his training that he would be required to undergo abroad, and that this was on the basis that the accused should serve the Company for a minimum period of seven years. That the accused represented and assured to the Company that if he was to be sent abroad at Companies cost, he will serve the Company for atleast 7 years after return. In paragraph no.11, it is mentioned that the accused without obtaining permission from the Officers of the Company, absented himself and left the station, that he did not follow the instructions of the Chairman and Managing Director of the Company, and finally by a letter dated 22<sup>nd</sup> August 2006, submitted his resignation. Now, this is clearly a plain case of alleged breach of the terms and conditions of a contract of service. This does not appear to be a case of any criminal offence/offences, whatsoever.

18 Undoubtedly, an attempt to give criminal colour to the matter, has been made by making an assertion 'that the accused



had no genuine desire to serve the Company, but only in order to have a training trip abroad at Companies cost, accused made false representation to the Company, and induced the Company to give him job, and send the accused abroad at Companies cost.' Now, how and on what basis this intention of the accused is perceived, is indicated in the complaint by making the following claim.

“Intention of accused is further clear in his not getting the indemnity bond signed by indemnifier Shri Prem Shankar named in the bond”.

19 It may be observed in this connection that, admittedly, the accused left the employment on 22<sup>nd</sup> August 2006, while the indemnity bond had been given by him on his joining the employment i.e. some time in the year 2003. As per the version in the complaint, it was revealed after the accused had left the employment, that he had not submitted the indemnity bond 'as required', inasmuch as though it had been signed by him, it was not executed by the indemnifier one Mr.Prem Shankar, as should have been done.

20 In paragraph no.14, it is averred that 'however, in utter disregard to the terms of contract, directions of the superior and those of even Chairman and Managing Director of the Company, accused by leaving the job, caused wrongful loss to the Company'.

It is interesting to reproduce paragraph no.15 of the complaint.

*“It is respectfully submitted that the intention of the accused to cheat the company was revealed only after enquiry into the matter after the accused abruptly left the job. Till then, it was being looked upon purely as a service matter. As such, it is submitted that present complaint is being filed in time from the date of revelation of the truth.”*

It can be clearly seen that a case of the breach of the service conditions, or breach of a contract, is being given criminal colour only on the assertion that 'the accused from the inception, had an intention to cheat the Company'. How this intention could be perceived by the complainant, is attempted to be explained on the basis that *the accused had not submitted an indemnity bond which was to be executed by the indemnifier*. Admittedly, such objection with respect to the indemnity bond could have been levelled by the Company earlier also, but it was not done, and a claim that this was revealed only later, has been made, which on the face of it suggests that no importance to this aspect of the matter was given by the Company, at that stage.

21 There is also a significant aspect of the matter. If the terms of the indemnity bond executed by the applicant in favour of the company are seen, it reveals that the applicant had agreed to pay to the company without any demur or protest as compensation under the bond (in the event of the breach of the bond), a sum as reflected in the schedule A to the indemnity bond. This schedule provides a scale for the determination of the amount

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of indemnity on the basis of the period after which the employee would leave the employment. For instance, if the employee would leave the employment in the first year (after having returned from the training), then the amount payable to the company would be Rs.15,00,000/- (Rupees Fifteen lac). It would be reduced if the employee would leave in second year, further reduced if he would leave in the third year and so on. The amount would be only Rs.2,10,000/ (Rupees Two Lac and Ten Thousand) if the employee would leave the employment in the seventh year. It is, therefore, clear that the terms of the indemnity bond were carefully drafted and **possibility of the employee leaving the employment was clearly, already kept in mind by the company, and the employee was made aware of the consequences.** It was a well thought of the service contract, for the breach of which the consequences were provided for by an agreement between the parties. In these circumstances, the act of leaving the employment – a possibility that was thought of, put specifically in writing by providing consequences in that event – cannot be successfully alleged to be one inviting criminal prosecution for cheating the company. In fact, civil disputes between the parties are pending, and the company would be able to recover damages from the applicant, in the event of succeeding in the civil proceedings.

22 It is not possible to hold that the complaint, on a fair reading thereof, discloses the commission of any offences by the accused. The accusation of an offence punishable under section 418 of the IPC, is clearly erroneous. The section applies to cases of cheating by guardians, trustees, solicitors, agents who stand in a

peculiar relationship with the victims. It is difficult to imagine the application of its provision to the case of an employee who, had a dispute with the company, and the company claims to have suffered wrongful loss because of his act (of leaving the employment) and claims that he (as an employee) was bound to protect the interest of the company.

23 When the dispute is clearly of a civil nature, by mere use of words, such as 'cheated', 'cheating', 'intention being dishonest from the inception' etc. the complainant cannot succeed in preventing the court from viewing the basic complexion of the dispute, clearly.

24 What has been averred in the complaint can be averred almost in any and every case of breach of service conditions where leaving the employment in alleged violation of the terms of contract, causes some loss or hardship to the employer. In this case, there is no basis for the claim that the accused had a dishonest intention from the inception, particularly because he had left the employment much after taking the training abroad, and not immediately after returning. The accused, admittedly, served the company for a period of three years after having undergone the training.

25 It is well settled that the inherent powers of this Court are meant to be exercised for the purpose of preventing the abuse of the process of any Court, or to secure the ends of justice.

26 This is a clear case where the dispute between an employee and employer is sought to be given a criminal colour. Continuation of such proceedings would amount to abuse of the process of the Court. The harassment to which the accused would be put by continuation of the proceeding, would result in miscarriage of justice, even if he is ultimately acquitted of the alleged offences. It would be, therefore, just and proper to exercise the inherent powers of this Court to quash the prosecution of the accused.

27 Since I am quashing the prosecution itself, I have not fully examined whether the Chief Judicial Magistrate, Ratnagiri had territorial jurisdiction to entertain the complaint, and try the alleged offence. However, on a *prima facie* view of the matter, the least that can be said is that this aspect is not free from doubt.

28 The application is allowed.

29 The order issuing process, as passed by the learned Chief Judicial Magistrate, Ratnagiri, is quashed and set aside.

30 The complaint stands dismissed.

31 Criminal Application is disposed of accordingly.

**(ABHAY M. THIPSAY, J)**

*This print replica of the raw text of the judgment is as appearing on court website (authoritative source)*

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*Publisher has only added the Page para for convenience in referencing.*

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