

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 6395 OF 2021

Mitesh Ashok Kumar Adnani And Ors. ...Petitioners

Versus

State Of Maharashtra And Anr. ...Respondents

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Mr. Satish J. Agarwal a/w Mr. Dhara Shah Advocate for the petitioners.

Mr. Asif J. Shaikh for Respondent No.2.

Mr. A. R. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 11th AUGUST, 2022

PC :

1. The petitioners seek to challenge the order dated 27.10.2021 passed by Additional Sessions Judge, Greater Bombay rejecting Criminal Revision Application No.247 of 2021 and order dated 25.02.2021 passed by Additional Chief Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai holding that the court is satisfied that there is prima facie material against the accused for framing charge for the offences punishable under Sections 420, 406, 408 of IPC as well as Section 65 and 66 of Information Technology Act.

2. The respondent No.2 filed a private complaint against the petitioners alleging commission of offences punishable under Sections 420, 406, 408, 380, 381 read with Section 120-B of the Indian Penal Code and Sections 65 and 66 of Information Technology Act. It is alleged that the complainant is partner of M/s. CAMMER India, a partnership firm originally constituted by accused No.1 and 2 on 11.04.2015. The complainant became partner of M/s. CAMMER India by executing admissions cum-PARTNERSHIP deed dated 25.11.2015. It was agreed between the partners to distribute the Unview Brand in electronic security systems and or such other business as may be decided by partners prior to partnership firm of M/s. CAMMER INDIA, accused No.1 and 2 were working in PRAMA HIKVISION INDIA Pvt. Ltd. The complainant is partner in another firm VULCAN INDIA and through VULCAN INDIA, complainant and his partner were selling brand called HIKVISION. Complainant is in business of selling CCTV Camera. PRAMA HIKVISION used to import CCTV camera from chineses company called HIKVISION. The said company was sole distributor of HIKVISION in India. The complainant through VULCAN INDIA used to purchase CCTV camera from PRAMA HIKVISION in wholesale price and would sales it in

market. The accused No.1 and 2 were working in PRAMA HIKVISION. They were responsible for all India sales of CCTV camera's and accused No.1 was intrusted by his company to handle the account of VULCAN India. Accused No.1 and 2 boasted that they were selling brand of HIKVISION through PRAMA HIKVISION of around Rs. 300 crores, and out of entire sale 30% is of IP camera and gave zosy picture that they are selling around 90 crores of IP Camera's in a year. VULCAN was one of the biggest distributor of HIKVISION brand camera's in India. Accused No.1 and 2 were stressing that they should go alone purchase another brand. The accused No.1 and 2 introduced accused No.3 to complainant, who was also working with HIKVISION. Accused No.3 was presently working with chinese company UNIVIEW. VOLCANS India wanted to sell brand UNIVIEW, but required sales team. Accused No.1 and 2 showed their willingness to be part of sales team to sell brand UNIVIEW IP cameras. Accused No.1 to 3 were persuding complainant and his partner. They insisted that firm should be formed in their own name and intially complainant should not be partner. Accused showed confidence that they would sell IP camera very easily and complainant need not worry about sales. Believing their

words, complainant agreed to invest in the partnership firm by name CAMMER INDIA by making both accused partners and all investments into partnership was made by complainant and his partner. MOU was executed on 18.05.2015. UNiview Ltd entered into agreement with M/s. CAMMER INDIA in July 2015 giving distribution rights of IP camera by its name UNIVIEW in India and set target of 7 crores of purchase of M/s. 'CAMMER INDIA' which was revised to 405 crores. UNIVIEW was not ready to give credit to CAMMER. The credit extended to CAMMER was based on credit worthness of VULCAN. Accused No.1 and 2 were given rights of operation of M/s. CAMMER INDIA. Complainant enquired about sales and others information. Accused No.1 and 2 did not disclose information. The complainant agreed to purchase material of around of Rs. 2.5 crorers in the name of VULCAN. Other accused selected in sales team. There was no progress in sales. Accused No.1 and 2 agreed to work as employees with CAMMER. The complainant and his partner visited china. They were not received well by UNIVIEW. Accused No.1 and 2 had passed false information about complainants "VULCAN and M/s. CAMMER UNVIEW informed complaint that M/s. CAMMER is not longer sole distributor of UNVIEW in India.

Accused No.1 and 2 formed new company and became directors by name UNVIEW TECHNOLOGIES INDIA Pvt. Ltd. along with owner of HI-FOCUS ELECTRONICS INDIA Pvt. Ltd. Accused initiated procedure for registering new company while they were partner or working in CAMMER INDIA. While learning company accused No.1, 2, 5, 6, 7, 8, 9, 10 took laptop was of M/s. CAMMER INDIA. The laptop was containing data of firm in which list of clients were fed. Accused No.1 and 2 removed the data from e-mail of the firm. The data included details of purchase order from clients, software and firmware important for timely updates for camera's, detailed compiled list of customer data acquired during exhibition of 2015, exhaustive compiled data by VULCAN from 2003, authorization by UNIVIEW to take part in government tenders. Accused No.1 after keeping his personal e-mail in loop, he deleted all data, e-mails etc. from official mail ID. Data was first forwarded to their personal mail ID and later deleted from official laptop because accused No.1 and 2 had intention from the beginning to cause wrongful loss to complainant and gain wrongful profit. The accused No.1 and 2 also took other accused along with them when they left m/s. CAMMER INDIA without notice. Police complaint was filed.

3. The learned Metropolitan Magistrate had directed Park Site police station to conduct inquiry under Section 202 of Cr.P.C.. The report dated 29.07.2017 was submitted to the Court. During enquiry statements of complainant and opponents were recorded. The report opined that accused used firmware data of company for their own use and deceived complainant. Process was issued. Evidence of complainant before charge was recorded on 11.03.2020. The learned Magistrate vide order dated 25.02.2021 directed framing of charge against the petitioners for the offences punishable under Sections 420, 406 and 408 read with 34 of the IPC and section 65, 66 of Information Technology Act. The petitioners preferred Revision Application No.247 of 2021 before the Sessions Court challenging the order passed by learned Magistrate vide dated 25.02.2021. The revision application was rejected by order dated 27.10.2021.

4. Learned Advocate for the petitioners submitted that both the Courts below had committed an error, by passing order directing framing of charge and dismissal of revision application. There is no material to constitute the offence alleged against the petitioners. The petitioners are

employees of M/s CAMMER India. They were under the employment of the said company for a period less than one year. The allegations are false. Respondent No.2 had approached the Parksite Police Station, Mumbai and lodged police complaint on 18.04.2016. He again approached the police station and lodged complaint dated 26.04.2016. The police gave negative report dated 06.06.2016 stating that dispute is of civil nature. However, the learned Magistrate by order dated 05.04.2017 called for report under Section 202 of Cr.P.C. The Parksite Police Station filed positive report under Section 202 of Cr.P.C. dated 29.07.2017. Thus, police took different views on two different occasions on the same allegations. The report was defective. The police failed to understand the terms of the Distributorship Agreement between Zhejiang Uniview Technologies Co. Ltd and M/s. CAMMER India, which does not provide any exclusive right to particular distributor. Zhejiang Uniview Technologies Co. Ltd. provided firmware data to Uniview technologies. Firmware data is stored on computer/laptop or other hardware device that gives instructions as to how the device should operate. The firmware provides the control program for the device. Firmware data cannot be changed or deleted by an end-user without using special programs.

As Zhejiang Uniview Technologies Co. Ltd provided the firmware data of Uniview Technologies India Pvt. Ltd. owned by the accused No.1 and accused No.2. There is no question of any offence being committed by accused even if, they using it for their own benefit. The process was issued mechanically. The applicant No.1 and 2 were forced to resign from M/s. CAMMER India by respondent No.2 and others. There was no other option to denigrate themselves from being partners in their own company. The applicant No.1 and 2 were continuously harassed. The applicant No.1 and 2 were responsible for all India sales of CCTV cameras in Prama Hikvision India Pvt. before they started their own company CAMMER India and made the respondent No.2 business partner. All data belongs to applicant No.1 and 2. The allegations against the other applicants are vague. Complainant and Cedvick Pai were new partners in M/s. CAMMER INDIA and even before they had become partners in CAMMER INDIA, the applicant No.1 and 2 purchased laptops for their employees. The allegations do not constitute offences. Merely retaining laptop in lieu of salary does not amount to cheating. For framing charge, no prima facie case is made out. The evidence before charge does not make out any offence. The Court had occasion to

assess evidence to invoke section 245(1) of Cr.P.C. Both impugned orders are contrary to law. The petitioners cannot be prosecuted for offences under Section 420, 406, 408 IPC, since provisions under I.T. Act are also invoked against them. There is no case made out for framing charge. Learned Magistrate erred in directing framing of charge. Reliance is placed on decision of this Court in the case of **Awadhesh Kumar Paras Nath Pathak Vs. The State of Maharashtra and Anr.** decided by this Court on 26.02.2020 in Criminal Application No. 2562 of 2019 and another decision of this Court in the case of **Gagan Harsh Sharma and Anr. Vs. The State of Maharashtra and Anr.** delivered in Criminal Writ Petition No. 4361 of 2018 on 26.10.2018.

5. Learned advocate for respondent No.2 submitted that there is no infirmity in the impugned order. Prima facie case is made out against the petitioners. Revision application has been dismissed by assigning reasons. The petitioner No.1 and 2 instilled fear in the mind of respondent No.2 that his partnership firm Vulcan India which was no.1 distributor in India of CCTV brand called Hickvision, will be closed by Hickvision India in Indian market. The petitioner No.1 and 2

introduced accused No.3, who is International Director of Chinese CCTV manufacturer Uniview Technologies Co. Ltd. which oversees sales operation of CCTV cameras with brand name Uniview. With planning by petitioner No.1 and 2 alongwith accused No.3, they conspired to test chinese CCTV products in Indian market at the cost of respondent No.2 and his firm Vulcan India. The accused did not insist to start new firm with the name of Uniview. This shows their conspiracy. Petitioner No.1 and 2 recruited petitioner No.4 to 10. The petitioner No.1 and 2 did not allow respondent No.2 to start business with existing partnership firm VULCAN India, stating that Hickvision India will stop giving material immediately. Investments were done by respondent No.2 to the extent of 2.5 crores. The petitioner No.1 and 2 did not make sales as promised by them. They promoted their name and they were not selling CCTV products but distributing them as part of their conspiracy to test product without taking any advance money from purchaser or any security cheque etc. The petitioners kept data of customers and used it after they formed company. The petitioner No.1 and 2 before giving resignation were not attending office at least 15 days prior to giving resignation hurriedly without completing formalities. They were talking

to new financiers when they were partners in CAMMER. They were using resources of respondent No.2 and Vulcan India. All of them took laptops without informing respondent No.2 they claimed that laptops were retained in lieu of salary. Accused No.3 stopped giving technical support to CAMMER after it has made investment of Rs.2.5 crores and without intimation. The petitioners had earlier preferred criminal Revision Application No. 738 of 2019 challenging order of process. The said application was rejected on the ground that there is prima facie case made out against accused. The criminal Revision Application No. 247 of 2021 Challenging order dated 25.02.2021 was rejected on 27.10.2021. All defences are to be decided in full fledged trial. Evidence of complainant is recorded before charge. The cross examination of witness is due. The petition, initially challenged order of process by preferring Revision Application. It was rejected. Evidence before charge was recorded. The Court passed order that charge can be framed. The evidence of respondent No.2 is gone unchallenged. Elaborate reasons are given by court while passing impugned orders. The petitioner No.1 and 2 told the police that laptops were retained as their salary was not given. The view expressed in the case of Gagan Sharma

and another Vs. State of Maharashtra and another is not accepted in another decision in the case of Awadhesh Kumar Vs. State of Maharashtra. The reference is pending. The act of retaining laptop is not covered under provisions of I.T. Act.

6. Perused the complaint, impugned orders and documents on record. The learned Magistrate vide order dated 25.02.2021 has observed that there is prima facie material available against the accused for framing charge under Section 420, 406, 408 read with 34 of the Indian Penal Code and Section 65 and 66 of the Information Technology Act and charge can be framed against petitioners. The Sessions Court while dismissing the revision application vide order dated 27.10.2021 has observed that the probative value of material on record cannot be gone into at the stage of framing of charge. After perusal on record and hearing the parties the trial court comes to the conclusion for the reasons to be recorded that there is prima facie case made out, framing of charge against the accused is justified. At the stage of framing charge meticulous consideration of evidence and materials by the Court is not required. If from the material on record strong

suspicion about commission of offence can be inferred, the Court is justified in framing of charge against the accused in respect of the offence. The appreciation of the evidence, material on record, is not permissible. The learned Sessions Judge has analysed factual aspects of the matter and dismissed the revision application.

7. After issuing order of process the petitioners had preferred Criminal Revision Application No. 738 of 2019 before Sessions Court. The said application was rejected on the ground that at the stage of issuance of process, court is expected to see prima facie case. The Court took note of report under Section 202 Cr.P.C. The report indicate that the inquiry conducted under Section 202 of Cr.P.C. discloses that laptop was handed over to the opponents while working with CAMMER India Company. After they left employment on the ground that salary was not given to them. The opponents utilized the laptop and thereby cheated the complainant/company. Thereafter, evidence before charge was recorded. Based on the material and the evidence before the charge, the trial Court has observed that charge can be framed against the accused. The evidence of the CW No.1 was recorded. In the evidence

before charge, the respondent No.2 (CW-1) has deposed the role of the accused, how accused No.1 and 2 made representations to respondent No.2 and his partner and how according to him the accused had deceived them. It is stated that they were intent to cause deceit from beginning. Documents were produced on record. The evidence is deposed in detail. Cross examination was reserved by defense. This evidence cannot be discarded by coming to conclusion that no case is made out for framing of charge. CW No.1 has stated that the accused have cheated the complainant since beginning. The witness has provided the details of transactions as to how the accused have deceived the complainant. It was deposed that the accused made the complainant to spend huge amount of money by participating in the exhibitions and carrying out advertising and promotional activities, where they only promoted themselves along with the director of Hi-focus. The accused started new company namely Uniview Technology pvt. Ltd. making people to believe that the said company is the sole company authorized to sell Uniview products and used brand of camera.

8. There are no grounds for discharging the accused. The Sessions Court has analysed the material on record. It is

settled law that at this stage of framing charge, the court has to see whether prima facie case is made out. The witness is yet to be cross examined. The question whether the charges will eventually stand proved or not can be determined after evidence is recorded. In the case of Awadesh Kumar Paras Nath Pathak Vs. The State of Maharashtra and others dated 26.02.2020 and Criminal Application No. 1988 of 2019, the applicants had relied on decision of apex Court in the case of Sharat Babu Digumarti Vs. Government (NCT of Delhi) AIR 2017 SC 150 and decision of this Court in the case of Gagan Harsh Sharma Vs. The State of Maharashtra and another . In Gagan Sharma's case it was held that it is not permissible to apply provisions of IPC when specific provisions are provided under I.T. Act. The Division Bench in the case of Awadesh Kumar (supra) did not agree with aforesaid decision and referred the case to Larger Bench on the following issues:

(1) Whether section 43 read with Section 66 of I.T. Act covers the cases:-

(a) involving the obtaining of permission, by cheating the owner or any other person, who is in-charge of compute, computer system or computer network for doing the act enumerated in section 43 of IT Act?

(b) The expression fraudulently or dishonestly covers the cases in which permission is obtained from the owner or person who is in-charge of computer or computer system or computer network by cheating him?

(c) Whether section 72 of the I.T. Act covers all the ingredients of section 406, 408, 409 of the IPC especially cases in which access is secured dishonestly to any electronic correspondence, information, document or other material in misappropriated or converted for one's own used?

(d) Whether the acts done under Section 43 or 72 of the IT Act cover the criminal acts done with common intention? The bench had assigned reason for reference and disagreement with aforesaid decision. In the present case before me, the complainant has alleged that he was coerced to invest huge amount. The offences under IPC and IT Act are distinct. The facts of this case are distinct. The issue before apex Court in the case of Sharat Babu Digumarti (supra) is decided in different context. The decisions relied upon by learned advocate for petitioner are not applicable in the present case. There is no reason to interfere the order passed below. Hence, the petition is deserves to be dismissed.

ORDER

(i) Writ Petition No. 6395 of 2021 is dismissed and disposed of.

(PRAKASH D. NAIK, J.)