



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2616 OF 2014

M/s.MAGIC GOLD)...PETITIONER

V/s.

ANITA ANIL CHAVAN AND ANOTHER)...RESPONDENTS

Mr.S.M.Jain i/b. S.M.Jain and Associates, Advocate for the
Petitioner.

Mr.Rajesh Khobragade, Advocate for Respondent No.1.

Mr.S.V.Gavand, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 6th FEBRUARY 2020

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2 The petitioner/original accused is challenging the order dated 1st March 2013 passed by the learned Metropolitan Magistrate in Criminal Case No.4900113/SW/2012 issuing

process for the offence punishable under Section 420 of the Indian Penal Code on the complaint filed by the respondent no.1/original complainant.

3 Heard the learned counsel appearing for the petitioner /original accused. He vehemently argued that the bill annexed to the complaint shows that gold bracelet weighing 12.550 grams was sold to him and that gold was of 85 carat. He argued that, according to him, the gold bracelet sold to him was having mark of 23 KDM. This is reflected in the bill. The learned counsel further argued that in respect of the same transaction, the respondent no.1/original complainant had approached the District Consumer Disputes Redressal Forum and feeling aggrieved by the decision of the District Consumer Disputes Redressal Forum, the petitioner herein/original accused had approached the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai. The learned counsel further drew my attention to the judgment of the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai, whereby the complaint under the same Consumer

Protection Act lodged by the respondent no.1 herein/original complainant came to be dismissed. My attention is drawn to the observations of the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai.

4 As against this, it is argued by the learned counsel appearing for the respondent no.1 herein/original complainant that prevalent price of gold of 23 carat was Rs.29,500/- for 10 grams. What was sold to the respondent no.1 herein/original complainant under the bill dated 10th July 2012 was gold of 23 carat purity. However, during examination of that gold by Valuers, it was found to be of only 19.4 carat. Therefore, the respondent no.1 herein/original complainant was cheated by the petitioner herein/original accused. The learned counsel further argued that bills are generally rounded up, and therefore, it cannot be said that there is difference in weight. The learned counsel further argued that because of air pressure, there is difference in weight and as such, difference of weight of the gold bracelet during the course of examination is of no consequence.

5 I have considered the submissions so advanced and also perused the material placed before me which includes the complaint and annexures to that complaint.

6 It is averred in the complaint that the respondent no.1 herein/original complainant had purchased a gold bracelet from the petitioner herein/original accused. It is averred that she was informed that the bracelet is of 23 carat gold having weight of 12.550 grams and market rate of gold of 23 carat purity is Rs.29,500/- per 10 grams. Accordingly, the price for the said article came to be paid and it was Rs.37,000/-. It is further averred in the complaint that because of doubt, the gold bracelet came to be tested from Government approved Valuers namely Mahavir Tunch and M.G.Gold Checkers and it was found that the bracelet contains gold of 19.4 carat purity having gold contents of 80.80 % and 80.89 % respectively. Thus, in submission of the respondent no.1 herein/original complainant, she was sold the gold bracelet containing gold of 19.4 carat purity by representing the same to be of 23 carat purity.

7 On the basis of averments made in the complaint and verification statement of the respondent no.1 herein/original complainant, process for the offence punishable under Section 420 of the Indian Penal Code came to be issued by the learned trial Magistrate.

8 Whosoever cheats and thereby dishonestly induces the person deceived to deliver any property is said to have committed the offence of cheating and dishonestly delivering the property. In the case in hand, according to the complainant, she came to be deceived by the petitioner herein/original accused by stating that what is being sold to her is gold of 23 carat purity.

9 It is well settled that the process is required to be issued by due application of mind to the facts of the case and such application of mind needs to be reflected from the order directing issuance of process. The court is required to examine the documents as well as averments made in the complaint, so also the Verification statement cautiously, as summoning an accused is a serious business. In the case in hand, the respondent no.1

herein/original complainant had annexed the bill/invoice issued by the petitioner herein/original accused. One of the columns in that bill is of carat. As against that column, 85 T is mentioned. That column is not containing description of the gold bracelet as that of 23 carat purity. Weight of the gold bracelet is stated to be 12.550 grams.

10 As per the version of the respondent no.1 herein/original complainant, she had got that gold bracelet tested from Mahavir Tunch. The report of that Valuer was also placed before the learned trial Magistrate along with the complaint. Perusal of that report shows that the gold bracelet produced was weighing 12.640 grams. Second Valuer M.G.Gold Checkers is also stated to have tested purity of gold of the said gold bracelet. This Valuer has also stated weight of that gold bracelet as 12.640 grams. Both these Valuers have reported that the bracelet contains gold of 19.4 carat purity. On the basis of record, it is, thus, seen that what was sent for valuation is not the gold bracelet which was purchased from the petitioner herein/original accused. What was purchased

was gold having weight of 12.550 grams. The precious metal is always weighed with accuracy and by showing less weight, the petitioner herein/original accused was not to gain anything but he would have suffered loss in the business. It is not expected of any prudent jeweller to show less weight while selling the precious metal or jewellery made of precious metal. There is no substance in argument that air causes change in weight or difference in weight. Thus, the weight of jewellery sold was 12.550 grams and what was tested was a jewellery weighing 12.640 grams. The learned trial Magistrate was not at all justified in issuing process for the offence punishable under Section 420 of the Indian Penal Code. Penal statutes are required to be construed strictly. There is no scope for liberal interpretation by imagination that weight of the precious metal may vary from scale to scale.

11 In the result, the order of issuance of process impugned in the present petition suffers from infirmity as well as non-application of mind to the facts of the case, by the learned trial Magistrate. Infact, no case for issuance of process for the

offence punishable under Section 420 of the Indian Penal Code was made out, in the light of documents annexed to the complaint itself. Hence the order :

ORDER

- i) The petition is allowed in terms of Prayer Clause (B).
- ii) Rule is made absolute in above terms.

(A. M. BADAR, J.)