

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.416 OF 2024

Yogi Agarwal	...Applicant
<i>Versus</i>	
Rashmikant Shah & Anr.	...Respondents

Mr. Anil Agarwal a/w. Ms. Chhaya More, for the Applicant.
Mrs. M. R. Tidke, APP, for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 23rd SEPTEMBER 2026

P. C.:

1. Heard Mr. Agarwal, learned Counsel appearing for the Applicant and Mrs. Tidke, learned APP appearing for the Respondent-State. Inspite of service, none appears for Respondent No.1.

2. By this Criminal Application filed under Section 482 of the Code of Criminal Procedure, 1973 (“**CrPC**”), the Applicant is challenging the legality and validity of the order dated 1st March 2016 passed by the learned Additional Chief Metropolitan Magistrate, 22nd Court, Andheri, Mumbai, in C.C. No.451/SW/2012 as also the legality and validity of the order

dated 2nd December 2023 passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Borivali, Division, Dindoshi, Mumbai, in Criminal Revision Application No.144 of 2016. By the impugned order dated 1st March 2016, the learned Additional Chief Metropolitan Magistrate issued process against the accused for the offences punishable under Sections 406, 420, 465, 468 and 471 of the Indian Penal Code, 1860 (“**IPC**”) and by order dated 2nd December 2023, passed by the learned Additional Sessions Judge, the Revision Application challenging the said order issuing process is dismissed.

3. Mr. Agarwal, learned Counsel appearing for the Applicant submitted that Ardy International (P) Limited, a company in which the present Applicant is a Director has filed the Civil Suit No.2032 of 2005 on the Original Side of this Court against Shah Knitwear Industries Private Limited, a company of which Respondent No.1 is a Director, seeking a decree for a sum of Rs.11,91,053/- along with further interest on Rs.9,44,254/- at the rate of 18% per annum. He submits that the said Suit has been decreed by this Court by a judgment and decree dated 2nd August 2010. He submits that the execution proceedings bearing Execution Application No.1273 of

2017 has been initiated. In the meanwhile, the Respondent No.1- Rashmikant Shah in his capacity as a Director of M/s. Shah Knitwear Industries Private Limited, filed a private complaint bearing C.C. No.451/SW/2012 against the Applicant- Yogi Agarwal in his capacity as a Director of Ardy International (P) Limited. He submits that the said complaint has been filed for the mala fide purpose of delaying the execution proceedings so that the Applicant does not enjoy the fruits of the said decree dated 2nd August 2010 passed by this Court in Suit No.2032 of 2005.

4. Before considering the contentions raised by the learned Counsel appearing for the Applicant, it is required to be noted that a learned Single Judge (Coram: R. N. Laddha, J.) passed the following order on 12th February 2025:

“ Heard.

2. Issue notice to the respondents. Ms Fatima Lakdawala, waives service of notice on behalf of respondent No.1 and seeks time to file reply affidavit. Copy to be served on the other side within four weeks from today.

3. Stand over to 16 April 2025.

4. The learned trial Court shall defer the hearing of the case, till the next date.”

(Emphasis added)

5. Learned Counsel appearing for Respondent No.1 had sought additional time to file affidavit in reply and same was granted by the learned Single Judge by order dated 16th April 2025, which reads as under:

“ Time is extended by three weeks’ to file the reply affidavit.

*2. Stand over to **9 June 2025**, as a last chance.”*

6. Thereafter, this Criminal Application was placed before this Court on 27th July 2026 and the learned Counsel appearing for the Applicant pointed out that neither the said Fatima Lakdawala, learned Counsel has filed *Vakalatnama* nor reply has been filed. Therefore, this Court passed the following order on 27th July 2026:

*“1) A Learned Single Judge, by order dated 12th February, 2025 has issued notice to the Respondents and at that time, Ms. Fatima Lakdawala, learned counsel has appeared for the Respondent No. 1 and waived service of notice and sought time to file affidavit in reply. However, learned counsel for the Applicant states that **no reply has been filed nor even the vakalatnama has been filed by Ms. Fatima Lakdawala, learned Advocate.***

*2) Accordingly, **Mr. Anil Agarwal, the learned counsel appearing for the Applicant is requested to issue communication to the Respondent No. 1- Rashmikan Shah about the next date of hearing.***

3) It is clarified that as Ms. Fatima Lakdawala, learned advocate has already appeared in the matter on 12th February, 2026 and waived service of notice on behalf of Respondent No. 1, this is just an intimation to the Respondent No. 1 before proceeding further in the matter as the service is already completed.

4) It is made clear that if none appears on behalf of Respondent No. 1 on the next date of hearing, the Court shall proceed to hear and decide the Criminal Application on merits.

5) Stand over to 24th August, 2026.

6) The learned Trial Court is requested to grant suitable adjournment beyond 24th August, 2026.”

(Emphasis added)

7. Learned Counsel appearing for the Applicant states that pursuant to the said order, a communication is addressed to Respondent No.1, however, the same has returned back with remark that “no such person is found at the said address”. He submits that he has personally called Ms. Fatima Lakdawala, learned Counsel who has appeared for Respondent No.1 and informed about the above order dated 27th July 2026. He submits that affidavit to that effect will be filed during the course of the day.

8. In spite of this, none appears for Respondent No.1.

9. Perusal of the record shows that in the year 2005, Suit No.2032 of 2005 has been filed by Ardy International (P) Limited, of which the Applicant is a Director against Shah Knitwear Industries Private Limited, of which Respondent No.1 is a Director seeking the following reliefs:

“(a) that the Defendants be ordered and decreed, to pay to the Plaintiff a sum of Rs.11,91,053/- and further interest on Rs.9,44,254/- at the rate of 18% p.a. or at such other rate as this Hon’ble Court may deem fit and proper, from the date of filing of the suit till payment or realisation thereof.

(b) for costs of the suit and

(c) for such further and other reliefs as the nature and circumstances of the case may require.”

A learned Single Judge by judgment and decree dated 2nd August 2010 decreed the said Suit.

10. Thereafter, the said private complaint bearing C.C. No.451/SW/2012 has been filed. The process has been issued under Sections 406, 420, 465, 468 and 471 of the IPC by the

impugned order dated 1st March 2016. The said order has been confirmed by the learned Revisional Court by the impugned order dated 2nd December 2023.

11. Learned Counsel appearing for the Applicant has relied on the decision of the Supreme Court in the case of *State of Haryana v. Bhajan Lal*¹ and more particularly, on paragraph No.102 of the same, which reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their

1 1992 Supp (1) SCC 335

entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the

concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

(Emphasis added)

12. Thus, what the Supreme Court has held that where a criminal proceeding is manifestly attended with mala fides or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the High Court should exercise its power under Article 227 of the Constitution of India or its inherent power under Section 482 of the CrPC to quash and set aside the complaint.

13. The Respondent No.1 i.e. Complainant who has filed the said C.C. No.451/SW/2012 was not present even before the learned Additional Sessions Judge in said Revision Application No.144 of 2016. In this case, the Respondent No.1 appeared through Advocate -Fatima Lakdawala and waived the service on

behalf of Respondent No.1 and sought time to file affidavit in reply. In spite of giving opportunities, said Advocate-Fatima Lakdawala has not filed *Vakalatnama* and no reply has been filed. Thus, the contentions which are raised in the Criminal Application have remained uncontroverted.

14. There is substance in the contention raised by learned Counsel appearing for the Applicant that the criminal proceedings are filed for delaying the execution of the decree.

15. In the facts and circumstances, the guideline No.7 of paragraph No.102 of the said decision in *State of Haryana* (supra) is squarely applicable to the present case.

16. Accordingly, the Criminal Application is allowed in terms of prayer clauses (a) and (b).

17. Resultantly, the order dated 1st March 2016 passed by the learned Additional Chief Metropolitan Magistrate, 22nd Court, Andheri, Mumbai, in C.C. No.451/SW/2012 issuing process as also the order dated 2nd December 2023 passed by the learned Sessions

Judge, City Civil and Sessions Court, Borivali, Division, Dindoshi,
Mumbai, in Criminal Revision Application No.144 of 2016 are
quashed and set aside.

[MADHAV J. JAMDAR, J.]

**SONALI
MILIND
PATIL**

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SONALI MILIND
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