

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO.: 329 OF 2015

Ravindra S/o Keshavrao Nandre,
Age: 45 years, occu: Agriculture,
R/o Balaji Nagar, basmath,
Tq. Basmath Dist. Hingoli.

... **APPLICANT**

VERSUS

1. The State of Maharashtra.
Through The Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. The Superintendent of Police,
Parbhani Dist. Parbhani.
3. The Police Sub Inspector,
Local Crima Branch,
Parbhani, Dist. Parbhani.

(Copy to be served on office of
Public Prosecutor, High Court).

... **RESPONDENTS**

Mr. Amol Kakde, Advocate h/f Mr. Sangle Sominath M., Advocate
for the Applicant.

Mr. K. S. Patil, A.P.P. for Respondents.

CORAM:-

T. V. NALAWADE &

SMT. I. K. JAIN, JJ.

DATED:-

18th MARCH, 2015.

ORAL JUDGMENT:

1. Rule.
2. Rule made returnable forthwith. By consent, heard
both the sides for final disposal.

3. The proceeding is filed under section 482 of Cr.P.C. and Article 226 of the Constitution of India to challenge a direction given by the Investigating Officer in a letter which is purportedly written under the provisions of Section 102 of Cr.P.Code. In the letter dated 10th January, 2015 C.R. No.175 of 2014 registered in New Mondha Police Station for offence punishable under sections 406, 420, 34 of I.P.C. a direction is given to the Applicant, who is said to be witness in the case, to deposit Rs.15.21 Lakh in the police station. It is mentioned in the letter that the Applicant had given undertaking to police about 6 months prior to the date of letter to deposit the amount but the amount is not deposited. A relief is sought only for declaration that such direction cannot be given by police.

4. A copy of Criminal Misc. Application No.681 of 2014 filed in the Court of Additional Sessions Judge, Parbhani is produced and it shows that applicant had filed application for relief of anticipatory bail in C.R. No.175 of 2014. Learned Additional Sessions Judge granted the relief and a direction is given to release the applicant on furnishing P.R. and S.B. of Rs.15,000/- in case of his arrest. Submission was made that the relief is confirmed though initially interim relief was granted.

5. The crime is registered mainly against the persons like Bhavanidas Laxminarayan Mule and his nephew like Shripad and Shrikant. They had made false representation to persons like complainant Pradip Mukundrao Kanakdande that Shripad and Shrikant were working with one Airlines and they were in a position to bring gold from abroad at cheaper rate. The persons like complainant were induced to give the amount for purchasing the gold at cheaper rate and that way they were deceived. Initially some gold was actually given to create a show that the representation was true. That way, the amount of Rs.52.51 Lakh was collected.

6. Shripad Kulkarni, out of the aforesaid persons, came to be arrested and during interrogation he informed that out of the amount of the aforesaid fraud, the amount of Rs.26 Lakh was given by him to present Applicant Ravindra Nandre. It appears that in view of this information inquiry was made with present applicant and then the aforesaid development took place.

7. Submissions were made that the present applicant is not made accused till this date in the case. If the investigating agency is sure that the aforesaid amount was really received by him with the requisite knowledge and he

can be treated as the receiver of the stolen property it was always open to the agency to make him accused and arrest him, to seize stolen property. The provision of Section 102 Cr.P.C. is enabling provision and police can use the power given in this section and make the seizure. If the person like present Applicant is not cooperating and is not ready to act as a witness it is always desirable for the investigating agency to take necessary steps like making him accused and then recover and seize the property. The letter like letter dated 10th january, 2015 is not expected to be issued for exercising such power. Simply a direction is given to deposit Rs.15.21 Lakh. The provision of section 160 of Cr.P.C. shows that police can issue an order in writing to require the attendance of witnesses. The investigating agency has ample power of search and seizure even under sections 100, 101, 102 and 165 Cr.P.C. If by using the aforesaid money some property is purchased, that property also can be seized and taken over as a stolen property. In view of this position of law this Court holds that it was not desirable for the police to create a show of sending a letter which is challenged in the present proceeding.

8. In the result, the application is allowed. The so called

direction given in letter dated 10th January, 2015 is set aside. This is subject to the observations made by this Court in the present decision.

9. Rule is made absolute in aforesaid terms.

[SMT. I. K. JAIN, J.]

[T. V. NALAWADE, J.]

Dated:18/03/2015.

ans/329