

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

CRIMINAL REVISION APPLICATION NO. 277 OF 2001

Pappu alias Narendrasingh
s/o Pritam Singh Chatwal,
age 38 years, occ.business,
r/o Jyotinagar, Aurangabad

...Applicant

VERSUS

- 1] Sanjay s/o Vasant Paturkar,
age 36 years, occ. Business,
r/o Nawabpura, Aurangabad,
- 2] Premchand s/o Sumarmal Surana,
age 46 years, occ. Business,
r/o Samarthnagar, Aurangabad,
- 3] The State of Maharashtra,
through Jawaharnagar Police
Station

...Respondents

.....
Shri A.P.Bhandari, advocate for applicant
Shri J.V.Deshpande, advocate for respondent no. 1
Shri V.P.Kadam, A.P.P. for respondent no.3
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CORAM : V.M.DESHPANDE, J.

DATED : 2nd February, 2015

ORAL JUDGMENT : -

1] Heard Shri A.P.Bhandari, learned counsel for the applicant, Shri J.V.Deshpande, learned counsel for respondent no.1 and Shri V.P.Kadam, learned Additional Public Prosecutor for respondent no.3.

2] Respondent no.1 filed first information report with police station Jawaharnagar against the present applicant and respondent no.2, who died during the pendency of the present proceedings. The first information report was recorded as Crime No. I-106 of 1997 for the offence punishable under Section 406 of the Indian Pernal Code and Sections 5 and 33 of the Bombay Money Lenders Act, 1946.

3] After completion of the investigation, the investigating officer filed a charge sheet bearing No. 71 of 1997 on 9.7.1997 in the court of Judicial Magistrate, First Class, Aurangabad. The same was registered as Regular Criminal Case No. 75 of 1997.

4] On 28.8.1998, the learned Magistrate, after considering the police report and documents passed an order thereby he recorded a finding that on the available material no charge can be framed against the present applicant, and hence, he was discharged under Section 239 of the Criminal Procedure Code.

5] Respondent no.1 carried Revision before the Sessions Court, which was registered as Criminal Revision Application NO. 28 of 2000. The learned Revisional Court delivered a judgment on 8.8.2001. The Revision was allowed and the Revisional Court directed the Magistrate to frame the charge against the present applicant. The allegation in the first

information report shows that in the year 1996 the present applicant took signature on two stamp papers and also two cheques duly signed by respondent no.1. The first information report further reveals that the first informant has taken Rs. Ten Lacs and he used to repay the interest. The first information report further states that the applicant extended threat that if the amount of interest is not given, his shop will be sealed.

6] Section 405 of the Indian Penal Code defines what is criminal breach of trust.

“ 405. Criminal breach of trust—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”. ”

7] Section 239 of the Code of Criminal Procedure empowers the learned Magistrate that after considering the police report, which is sent to the learned Magistrate under Section 173 of the Code of Criminal Procedure and after hearing the prosecution as well as accused if the Magistrate is of the opinion that the charge against the accused is to be groundless, then the Magistrate is empowered to discharge the accused.

8] In the present case, the learned Magistrate heard both the Prosecutor as well as the present applicant on the point of framing of the charge. The allegation made in the first information report does not reveal that at any point of time the instrument which was in possession of the present applicant given by respondent no.1 was used or there are no allegations in the first information report that the present applicant has extended threat to respondent no.1 that he will be using those particular instruments which are in his possession to extract any further amount.

9] In that view of the matter, it is clear that the cheque and the stamp papers were never used by the present applicant.

10] There is no dispute that the present applicant has lent certain amount to respondent no.1. This court is informed by both the sides that the civil litigation is already pending amongst them. This court has no concern with the civil litigation. The concern of this court is as to whether the order passed by the learned Magistrate discharging the present applicant is correct or not.

11] Having regard to Section 405 of the Indian Penal Code and in view of the nature of accusations made in the first information report, it is crystal clear that the learned Magistrate

was right in reaching to the conclusion that the accusations made against the present applicant in so far as the offence punishable under Section 406 of the Indian Penal Code are groundless. The order passed by the Revisional Court, which is based on certain assumptions and presumptions cannot stand to the scrutiny of law.

12] In that view of the matter, the Criminal Revision Application is allowed. The order passed by the learned Additional Sessions judge, Aurangabad, dated 8.8.2001 in Criminal Revision Application No. 28 of 2000 is hereby quashed and set aside and the order passed by the learned Magistrate on 28.8.1998 is restored. Rule is made absolute accordingly.

[V.M.DESHPANDE, J.]

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