

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

Criminal Application (ABA) No. 333 of 2015

(Shri Chandeshwarkumar s/o Sheshnath Sharma Vs. The State of Maharashtra
through Police Station House Officer, P.S.O., Sitabuldi, Nagpur)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Shri U. K. Bisen, Advocate for applicant
Shri S. B. Ahirkar, APP for the State

CORAM : P. B. VARALE, J.

DATE : 5-8-2015.

Heard Shri Bisen, learned counsel for the applicant at length.

The application is for seeking protection in nature of pre-arrest bail by the applicant apprehending his arrest in connection with Crime No. 447/2012 registered at Police Station, Sitabuldi, Nagpur for the offences under Sections 420 and 408 read with Section 34 of the Indian Penal Code.

The documents placed on record show that one Dinesh Lohiya approached the learned Magistrate by filing application under Section 156(3) of the Code of Criminal Procedure. The sum and substance of the application is the present applicant and another employee one Santoshkumar who were employed by Shri Lohiya in his business of tour operator by playing mischief in the accounts caused loss to Shri Lohiya. It was the submission in the application that though he had approached the Police Station authorities, Sitabuldi by filing written

.....2/-

complaint, the police authorities attached to Sitabuldi Police Station without paying any heed to the report, only directed the applicant that he should attend the Police Station as and when called by the police officials. Thus by this application, it was prayed that directions be issued to register complaint. On 22-11-2012, the learned Magistrate passed the order directing Police Station authorities to submit the report of investigation.

On 23-11-2012, a report was lodged against the present applicant and another accused one Santoshkumar Maharaj.

The applicant had approached this Court seeking the similar protection i.e. protection in nature of pre-arrest bail by filing an application bearing Criminal Application (ABA) No. 396/2014 sometime in August, 2014 and this Court protected the applicant by interim order dated August 7, 2014. The protection was continued for a period of nearly two months and the applicant sought withdrawal of his application with liberty to file appropriate application at appropriate stage. The order was passed on 24-9-2014. It is the submission of the learned counsel Shri Bisen that as there was no apprehension, the applicant did not prosecute the matter further. He submits that it came to the knowledge of the applicant that the complainant with the same allegations had approached the police authorities in State of West Bengal and offence was registered at Posta Police Station in State of West

.....3/-

Bengal. Perusal of the papers placed on record shows that the applicant had approached the High Court of West Bengal by filing a writ petition seeking quashment of the said report. Shri Bisen, on instructions, submitted that the said petition pending consideration of the High Court.

The documents placed on record further show that notice was issued by Police Station, Sitabuldi on 24-4-2015. Perusal of the notice clearly show that the applicant was asked by the authorities to attend the Police Station for enquiry on the aspect of report lodged by Shri Lohiya in State of West Bengal. The applicant without any justifiable reason, failed to attend the Sitabuldi Police Station even though sufficient time of 5 days was granted to him. The submission of learned counsel is that as the notice was issued on the address of the applicant in State of Bihar, the applicant was unable to attend the Police Station and forwarded communication to the Sitabuldi Police Station authorities seeking extension of time on health grounds. Meantime, the applicant had approached the learned Sessions Judge for seeking protection in nature of pre-arrest bail. The submission of learned counsel Shri Bisen is that learned Sessions Judge on erroneous grounds rejected the application of the applicant.

It is the submission of the learned counsel for the applicant that there was a change of circumstance in view of the certain events occurred subsequently and this fact is not taken into

.....4/-

consideration by the learned Sessions Judge. It is the submission of learned counsel that though the complainant alleged mischief played by the applicant, there was a communication available showing that the complainant forwarded some communication to the applicant and along with that communication, the necessary material i.e. the account books were already forwarded. It is further submission of the applicant that the said account books would reveal that it is not the applicant who played mischief but it is the complainant himself who is in arrears of some amount due and payable to the applicant.

Perusal of the order passed by the learned Sessions Judge shows that the application was opposed by the investigating agency on the ground that the booking in relation to the travel agency operated by the complainant was accepted by the applicant and other accused through on-line booking system. The learned Sessions Judge also referred to the submission of the applicant that the alleged misappropriated amount was subsequent to the period wherein the applicant was engaged with the complainant. The learned Sessions Judge also considered the submission that initially the material was not available with the applicant and subsequently, certain material in the form of documents was available with to the applicant. The learned Sessions Judge, thus, considering the grounds raised by the applicant, rejected the

.....5/-

application.

Though learned counsel Shri Bisen for the applicant made an attempt to submit that there was a material in the form of some exchange of communication between the parties and this is a change in circumstance, in my opinion, if the same was part of communication between the parties, nobody prevented the applicant to place reliance on these documents when the applicant was before this Court seeking protection of pre-arrest bail or immediately, thereafter. But the applicant failed to do so. The other ground raised by the applicant is communication between the parties show that it was the complainant himself who was in arrears of amount due and payable to the applicant may be on ground or the defence for the applicant and it can be assessed at a later point of time. Prima facie material reflects the allegation of involvement of the applicant in playing mischief. The applicant who had approached this Court seeking protection by filing application himself withdraw the application. It is not in dispute that the interim protection granted to the applicant stand vacated on withdrawal of the application. It is also not in dispute that the applicant was granted liberty while withdrawing the application to move the application and even assuming that there was some material made available at a later stage to the applicant in the form of communication forwarded by the complainant of October, 2014, the applicant on his own will and

.....6/-

wish thought it fit to keep mum for a sufficient period and then filed an application sometime in the month of July, 2015 before the learned Sessions Judge. The learned Sessions Judge committed no error in considering the grounds raised by the applicant. Considering all these aspects though initially this Court was inclined to issue notice and calling reply from the State, the learned counsel for the applicant was insisting for passing some interim orders.

On consideration of the submissions of learned counsel for the applicant and the material placed on record as referred to above, I am not inclined to grant any protection to the applicant. In my opinion, the application is meritless and same deserves to be rejected. Accordingly, criminal application stands rejected.

JUDGE

wasnik

...../-