

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

CRIMINAL APPLICATION NO. 5025 OF 2015

Yusuf s/o Yasin Shaikh

..... **APPLICANT**

V E R S U S

The State of Maharashtra & Ors.

.... **RESPONDENTS**

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Mr. N.K.Kakade, Advocate for Applicant.

Mrs. R.K.Ladda, A.P.P. for R.Nos. 1 & 2 – State.

Mr. A.M.Karad, Advocate for R.No. 3.

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CORAM : A.V.NIRGUDE &

INDIRA K. JAIN, JJ.

DATE : 14th JANUARY, 2016

ORAL ORDER :-

The applicant is an employee of one Kohinoor Technical Institute, Aurangabad. He is accused No. 3 in Crime No. I-95/2015 registered at City Chowk police station, Aurangabad for the offences punishable u/ss 420,467,468,471,409,419,511 read with 34 of the Indian Penal Code. Offence punishable u/s 103 of the Indian Trade Mark Act is also added.

2. The facts leading to this application, in short, can be stated as under.

Municipal Corporation, Aurangabad was to implement certain educational scheme initiated by the Central Govt. who assured Municipal Corporation that if the education is imparted to needy students, it would reimburse the cost in part. Accordingly, Municipal Corporation selected Kohinoor Technical Institute for imparting such education and sent them a list of 1145 students. According to Municipal Corporation, these students were apparently eligible for taking education under the scheme. Municipal Corporation, however warned Technical Institute that they should verify the eligibility criteria of each students and then start their education. Pursuant to this arrangement, the applicant here as Manager of said Technical Institute got printed some hand bills having logo of Technical Institute as well as of Municipal Corporation. The copies of these hand bills were to be distributed amongst the students for soliciting response.

3. The arrangement between the Municipal Corporation and the Technical Institute was made on 03/03/2015 and on 17/03/2015. The applicant, as Manager of the Institute, sent a letter demanding TBN numbers so as to facilitate withdrawal of amounts payable to them under the scheme. Admittedly, no response was given to this letter. No TBN numbers were imparted. Municipal Corporation suspected some foul-play in this arrangement and on 09/04/2015 they lodged this complaint. They alleged that their Officers who are accused Nos. 1 and 2 and the applicant who is Manager of the Technical Institute had planned to defraud Municipal Corporation and the Central Govt.

It is their case that their Officers in violation of the terms of the scheme, selected exclusively Kohinoor Technical Institute and even sent a list of students. This list was also not genuine. They suspected that to siphon off the funds from the scheme, the applicant devised a plan. Soon after the complaint was filed arrangement between the Institute and Corporation was terminated. No amount was withdrawn. Hand bills which were printed also went waste. They could not have been used after the complaint was filed.

4. The question is whether the applicant who is manager of Technical Institute had committed any offence. The answer is in the negative. Assuming that he was party to the scheme, if he received letter dated 03/03/2015 from Municipal Corporation, he was in a position to pursue the work so and to get remuneration. The list which was sent to the Technical Institute was admittedly not prepared by the Institute. The applicant was trying to demand TBN numbers for withdrawal of amount. Writing such letter, in our view, did not amount to any offence punishable under the Indian Penal Code. It, at the most, would amount to demand made against the terms of contract. We are of the view that writing such letter did not even amount to attempted offence. Due to timely action of the Municipal Corporation, the entire case has been solved. Municipal Corporation is now free to implement the scheme of the Central Government.

5. In view of this we do not find that there is any ground for proceeding against the applicant. The case against the applicant stands quashed in terms of prayer clause 'B'.

6. Connected Criminal Application No. 5765 of 2015 is allowed.

[INDIRA K. JAIN, J.]

[A.V.NIRGUDE, J.]