

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6801 OF 2016

Hemant S/o Jayant Vaidya,
Age : 55 years, Occu.: Business,
R/o : Saraswati Colony, Latur,
Taluka and District : Latur .. Applicant

Vs.

- 1] The State of Maharashtra,
Through the Police Inspector,
M.I.D.C. Police Station,
Latur, Taluka and
District – Latur
- 2] The Superintendent of Police,
Latur .. Respondents

Mr. R.S. Deshmukh, Advocate for the applicant
Mr. S.N. Morampalle, APP for the respondent/State
Mr. S.S. Deshmukh, Advocate to assist A.P.P.

CORAM : A.S. CHANDURKAR, J.
DATE : 22/12/2016

ORAL ORDER :

Heard.

2. The applicant apprehends his arrest in connection with Crime no.363 of 2016 registered at M.I.D.C. Latur Police Station, Taluka and District - Latur for the offences punishable under Sections 406, 407, 420, 467, 468, 471 and 506 of the Indian Penal Code.

3. As per the FIR dated 23/10/2016, the proprietor of Pallavi Enterprises and Manager of Durga and Rawleshwar Dal Mill has stated that various foodgrains had been kept for storage at Kisan Mitra Warehouse that was owned by the applicant. The relevant period of such storage was from 11/8/2012 till 11/2/2013. It was further stated that towards the foodgrains that was stored, an amount of Rs.5,33,000/- had been borrowed from the applicant. On 11/10/2015 after making necessary arrangements for repayment of said amount alongwith interest, the informant and his father approached the applicant. He was asked to come after two days. On 13/10/2015, when the informant approached the applicant, he was told that all the foodgrains stored had been sold out. On that basis, report came to be lodged claiming that the informant had been duped to the extent of Rs.2,10,78,500/-.

4. Shri R.S. Deshmukh, learned counsel for the applicant submitted that the present report had been lodged merely as an afterthought and after lodging earlier reports which were treated as giving rise to a

civil dispute. It was submitted that initially on 16/10/2015, the informant had made the very same complaint as has been made now to the M.I.D.C. Latur Police Station. The applicant had been summoned in the said matter and after considering his reply, it was opined by the Investigating Officer that the dispute was entirely of a civil nature. On that basis, cognizance of said report was not taken. A report to that effect was also forwarded by the Investigating Officer to the Sub Divisional Police Officer. The applicant made representation to the Collector on 29/2/2016 referring to the harassment by the informant in that regard. The legal notice issued by the informant was also duly replied on 29/10/2015 after which nothing further was done by the informant. On the basis of very same facts, the present report had been lodged. It was submitted that considering the provisions of the Bombay Warehouses Act, 1959, as the applicant was holding the original receipts with regard to the foodgrains delivered back to the informant, it was clear that there was no substance in the complaint. It was then submitted that the entire dispute was based on documentary material and there was no reason

whatsoever to deny protection to the applicant as he could be directed to co-operate with the investigation. It was pointed out that before the Sessions Court, interim protection had been granted and the applicant had co-operated with the investigation.

5. The Application is opposed by learned Additional Public Prosecutor Shri S.N. Morampalle by relying upon the police papers. He referred to the statements of the Godown Keeper - Yuvraj Pawar as well as of the Cashier - Subhash Patil to indicate that entries in the outward register had been made at the instance of present applicant and that they were not responsible for the same. He also referred to the statement of one Sampatkumar Bang. It was submitted that considering the amount involved, no case for grant of protection had been made out.

. Shri S.S. Deshmukh, learned counsel assisting the prosecution also opposed the prayer for grant of protection. He also referred to the statements of aforesaid witnesses and submitted that the Godown Keeper and the Cashier were the employees of the applicant himself. He referred to the provisions of

Section 21 of the Bombay Warehouses Act, 1959 and submitted that the applicant as a Warehouseman was not entitled to lend money on the foodgrains stored. He referred to the outward register maintained by the applicant and submitted that interpolations made therein indicated complicity of the applicant. It was pointed out that the receipts relied upon by the applicant did not bear any signature and therefore the applicant was not entitled for protection. Considering the nature of economic offence, it was submitted that the Application deserves to be rejected.

6. I have heard respective counsel for the parties at length and also perused the material on record. The applicant pursuant to the license issued to him is carrying on the business of a Warehouseman. The relevant period of storage of foodgrains as referred in the report is between 11/8/2012 to 11/2/2013. Initially, on 16/10/2015, the informant had lodged a report at M.I.D.C. Latur Police Station that though he had kept foodgrains that were then valued at Rs.2,10,78,500/- in the godown of the applicant, he had been cheated and said foodgrains were not being

returned. Pursuant to the notice issued by the Investigating Officer, the applicant submitted his reply on 23/10/2015 pointing out that the entire stock of foodgrains had been lifted and that he was having custody of the original receipts. On that basis, the Investigating Officer informed the Sub Divisional Police Officer that the dispute between the parties appear to be of a civil nature and that the informant had been appraised of the said fact by notice dated 05/01/2016. It was therefore stated that nothing further was required to be done. It appears that the applicant himself had made a representation before the Collector on 29/02/2016 in context of the same matter, stating therein that he was being harassed by the informant. It is to be noted that a further notice issued under Section 91 of the Code of Criminal Procedure came to be issued to the applicant which was replied to by the applicant on 08/03/2016. Nothing further was thereafter done in the matter and it appears that based on the same facts, the present report has been lodged on 23/10/2016.

7. Considering the fact that pursuant to the initial complaint dated 16/10/2015 submitted by the

informant, it was pointed out that the dispute was of civil nature which matter was again looked into by the Sub Divisional Police Officer, I find that the present report being based on same facts and the dispute being related to documentary material, a case for protection has been made out. It is to be noted that in response to the earlier notices, relevant documents had been forwarded by the applicant to the police authorities. Considering these factual aspects and the custody of the original receipts being shown by the applicant, I do not find that his custodial interrogation is warranted. Though the learned counsel for the informant sought to rely upon statements of the Godown Keeper and the Cashier, effect of those statements alongwith the documentary material can be investigated. The applicant can be directed to co-operate in the investigation. Hence, I am inclined to allow the present Application.

8. In view of above, the following order :-

ORDER

I) In the event of applicant's arrest in connection with Crime no.363 of 2016 registered at

M.I.D.C. Latur Police Station, Taluka and District - Latur for the offences punishable under Sections 406, 407, 420, 467, 468, 471 and 506 of the Indian Penal Code, he shall be released on bail, upon executing P.R. bond of Rs.20,000/- (Rs. Twenty Thousand) with one surety in the like amount.

II) The applicant shall attend the concerned Police Station on 30/12/2016 and co-operate in the investigation.

III) He shall make himself available, as directed by the Investigating Officer.

IV) The applicant shall not take any steps to influence the prosecution witnesses.

9. By clarifying that the observations made in this order are only for deciding the bail Application, the same is accordingly allowed and disposed of.

[A.S. CHANDURKAR]
JUDGE

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