

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.297 OF 2016

Naren Madanlal Sharma @ Arjun Bhatiya .. Applicant

V/s.

Mohd. Afzal Abdul Kalam Khan & Anr. .. Respondents

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Mr. Anup Lahoti i/b. Mr. Vikram V. Tare-Patil, Advocate for the Applicant.

Mr. Amin Kherade, Advocate for Respondent No.1.

Mrs. S. D. Shinde, APP for Respondent No.1.

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CORAM : A.S. OKA AND P.D. NAIK, JJ.

DATED : MARCH 29, 2016.

P.C.

Rule. The learned APP waives service for the second respondent. Learned counsel appearing for the first respondent waives service. Forthwith taken up for final disposal.

2 The prayer in this application under Section 482 of the Code of Criminal Procedure, 1973 is for quashing the charge sheet filed against the applicant alleging commission of an offence punishable under Section 420 of the Indian Penal Code.

The allegation made against the applicant is that he posed himself to be a manager of the hotel known as "Sahil Hotel". It is alleged that the first respondent-complainant is working in a company carrying on business of foreign exchange. On 12th March, 2015, the applicant approached the first respondent and claimed that he was a manager of Sahil Hotel. He represented that he needed 2800 American dollars for selling to the customers of the hotel. He alleged that on the representation made by the first respondent, he delivered 2800 American dollars to the applicant. By telling the person who delivered the American currency to wait in the lobby, the applicant disappeared from the spot.

3 The first respondent has filed an affidavit-in-reply. He stated that as the present applicant is tested HIV positive, applicant's wife requested the first respondent to settle the dispute. Accordingly a Demand Draft in the sum of Rs.1 lac in the name of the employer of the first respondent is kept ready which is handed over by the learned counsel appearing for the applicant to the learned counsel for first respondent in the open court. In view of the amicable settlement, the first respondent has no objection for quashing the criminal proceedings.

4 The learned APP has submitted that there are six other offences registered against the applicant alleging commission of offences punishable under Section 420 of the Indian Penal Code. She makes this statement on the basis of the report dated 29th March, 2016 submitted by the investigating officer.

5 The learned counsel appearing for the applicant states that in all six cases, the applicant is enlarged on bail and he is in custody only in the present case. He tendered across the bar the medical report in support of this contention that the applicant has been tested HIV Positive. The said report is shown to the investigating officer who confirms that the reports show that the applicant has been tested HIV positive.

6 The facts of the case are peculiar. The first respondent has been compensated by making payment in the sum of Rs.1 lac by Demand Draft. Moreover, the applicant is tested HIV positive. The transaction on the basis of which alleged offence is lodged is a transaction between the individuals relating to sale of foreign exchange. It cannot be an offence against the society.

7 In view of the monetary settlement, no purpose is served by continuing the criminal proceedings. There is no possibility of conviction of the applicant in the peculiar facts of the case.

8 Therefore, this is a fit case to exercise jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973.

9 Accordingly, the application must succeed and we pass the following order:

:: ORDER ::

- (i) Rule is made absolute in terms of prayer Clause
- (b) with modification that applicant shall be released from the custody only if he is not required in connection with any other case;
- (ii) all concern to act upon an authenticated copy of this order.

(P.D. NAIK, J.)

(A.S. OKA, J.)