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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.588 OF 2015

Ashok Keshavlal Jogani ...Applicant
Versus
The State of Maharashtra and Anr. ...Respondents

Mr.A.H.H.Ponda i/b Mr.Shailesh Kharat, for the Applicant.

Ms.Anamika Malhotra, A.P.P for the Respondent-State

Mr.Girish Kulkarni a/w Mr.Archit Jayakar a/w Ms.Mahalakshmi G., Ms.Pratiksha Kabre, i/b Jayakar and Partners, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 7th OCTOBER, 2016

P.C. :

1. Heard learned counsel for the parties.

2. By this application, the applicant has impugned the order dated 30th July, 2014, passed by the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, by which his discharge

application came to be rejected, as well as the order dated 29th April, 2015 passed by the learned Additional Sessions Judge, Greater Bombay, in Criminal Revision Application No. 1069 of 2014, by which his Revision Application came to be rejected. The applicant is thus seeking quashing of the proceedings arising out of Case No.856/PW/2011.

3. The applicant alongwith other co-accused stands prosecuted for the alleged offences punishable under Sections 420, 465, 467, 468, 471, 34 r/w 120B, of the Indian Penal Code, on a complaint lodged by the respondent no.2. According to the respondent no.2 (original complainant) he resides in Mumbai as well as in Belgium and that he alongwith his family is carrying out business of diamonds in Belgium under the name 'Sailam B.V.B.A.' The respondent No. 2 (original complainant) in his complaint/FIR has stated that he and his family are Belgium nationals and hold PIO Card. He has stated in the said complaint that he, his father and brother are the partners of `Sailam B.V.B.A'. He has stated that the applicant's eldest brother – Deepak Jogani, is also trading in diamonds at Belgium and that their offices were close to each other. He has stated that as his company has been in the diamond business for the last several years, he

is well acquainted with several diamond dealers all over the world. He has stated that he knew Hayagriv Jogani, the applicant's son for last 4 – 5 years. He has stated that sometime during the first week of January 2011, his family had come to Mumbai. According to the respondent no.2, on 8th January, 2011 he had gone to visit his cousin brother – Devang Suresh Shah at Girgaon, Mumbai. He had stated that at Opera House, Mumbai, he met Hayagriv Jogani, applicant's son, who made enquiries about the diamond business with him. He has alleged that Hayagriv Jogani disclosed to him that he too was in the diamond business and that they were doing very well in the said business. Respondent no.2 has further stated in the FIR, that Hayagriv Jogani (applicant's son) invited him for dinner at his residence, pursuant to which, he visited the house on 9th January, 2011 at about 9.00 p.m. He has stated that Hayagriv Jogani introduced him to his father – Ashok Jogani (applicant), his brothers Vikram Jogani and Aditya Jogani (co-accused) and Avani Jogani, wife of Aditya Jogani. He has stated that in the course of dinner, all of them discussed about diamond business with him and that all of them told him, that they had the best quality of diamonds in the market; that they had good relations with all traders; that they had diamond companies under the banner of 'Aditya Diamonds', 'Vikram

Diamonds' ' 'Hayagriv Diamonds Industries Private Limited' and 'Aska Jewels'; and that they also disclosed to him that they had another company by the name of 'M/s.Helios Jewellery Private Limited' at Surat, Gujarat, which was also dealing in diamonds. According to the respondent No.2, the said persons disclosed to him, that if the respondent no.2's company did diamond business with their company `M/s.Helios Jewellery Private Limited', both would receive financial benefits. Respondent No. 2 in his FIR, has further stated that when he left the residence of the applicant, co-accused - Hayagriv Jogani and Aditya Jogani came near the parking lot and showed him 10 imported cars standing in the name of their companies. They also disclosed to him that the they were able to buy the said high end cars only due to their diamond business. According to the respondent no.2, due to the representations made and on seeing the said cars, he believed that they (accused) were doing extremely well in the diamond business. He has stated that all the accused called him to their office at Opera House on the next day, where they would discuss about the business.

4. According to the respondent No.2, pursuant to the aforesaid, he

went to their office at Opera House on 10th January, 2011 at about 11.00 a.m., where he was introduced by Aditya Jogani to their employees viz., Pravin, Amit and Computer Operator-Ms.Prema. He had stated that all the accused asked him to send cut and polished diamonds from Belgium through his Company, and took the entire responsibility of making payments. He had stated that when he asked the quality of diamonds they wished to purchase, they disclosed that they were interested in cut and polished diamonds and asked him to send the said diamonds to their company `M/s.Helios Jewellery Private Limited' at Surat, Gujarat. According to the respondent no.2, when he went back to Belgium he disclosed the aforesaid to his father and brother. Respondent No.2 has specifically stated that pursuant thereto, they sent the diamonds to 'M/s.Helios Jewellery Private Limited' at Surat, Gujarat on 25th January, 2011; 26th January, 2011; 31st January, 2011 and 4th February, 2011. He had stated that the diamonds sent by their company were valued at US$ 7,10,519.27 i.e. equivalent to Rs.3,19,73,055/-. According to the respondent No. 2, the applicant and the co-accused failed to pay the aforesaid amount for the diamonds, which were received by them through their company 'M/s.Helios Jewellery Private Limited' at Surat, Gujarat. Respondent No.2

has also stated that the 'Payment Remittance Instructions' (swift copy) of "Dhanlaxmi Bank Limited" sent to them, was found to be forged, pursuant to which, he lodged an FIR.

5. Learned Counsel for the applicant submitted that the applicant is not the Director of the Company 'M/s.Helios Jewellery Private Limited'**,** with whom the respondent no.2 had business transactions. He submitted that the applicant has been arraigned as an accused, only because he was present at the time, when the respondent no.2 came to their house for dinner, on an invitation by co-accused Hayagriv Jogani (applicant's son). He submitted that merely because the applicant was present for dinner does not show the culpability of the applicant. According to the learned counsel, the word **'सर्वांनी'** used by the respondent no.2 in the FIR, would not include the applicant. He submitted that the allegations, if any, are as against the co-accused i.e. sons of the applicant who are alleged to have forged the 'Payment Remittance Instructions' (swift copy) of "Dhanlaxmi Bank Limited and not the applicant. Learned Counsel has laid much emphasis on the word **'सर्वांनी'** used by the respondent no.2 in the FIR and the words

'सर्वजण हजर होते' referred to in the statement of Pravin, Amit and Ms.Prema. According to him, no offence whatsoever is disclosed, qua the applicant and as such the applicant ought to be discharged. He also submitted that the representation of having 10 imported cars was not made by the applicant, but by the applicant's sons. He submitted that both the Courts have misconstrued the peculiar facts of this case.

6. Learned Counsel for the respondent no.2 vehemently opposed the application. He submitted that the interpretation of the word **'सर्वांनी'** is a matter which will be decided by the trial Court. He submitted that the fact remains that respondent no.2 had clearly disclosed the applicant's name in the FIR and that all of them were present for dinner and in the meeting held on the next day, in the office at Opera House. He submitted that the civil suit filed by the respondent no.2 has been decided by this Court against the applicant and others and that there is a decree in favour of the respondent no.2. He submitted that the Division Bench of this Court had expedited the aforesaid criminal case and had directed the learned Metropolitan Magistrate to conclude the case as expeditiously as possible and in any event upto 2014. He submitted that time and again in view of the

pendency of the discharge application filed by the applicant, time was extended by the Division Bench for concluding the trial.

7. Perused the papers. It appears that an FIR was lodged on a complaint made by respondent no.2 with the E.O.W.C.B.C.I.D., Mumbai, pursuant to which C.R. No.40 of 2011 was registered, as against the applicant and others, alleging offences punishable under Sections 420, 465, 467, 468, 471, 34 r/w 120B, of the Indian Penal Code. The allegations set out in the FIR/complaint have broadly been set out in para 3 of the order. It appears that the discharge application filed before the learned Additional Chief Metropolitan Magistrate, 47th Court Esplanade, Mumbai, came to be rejected vide order dated 30th July, 2014, and the said order was confirmed by the revisional Court vide order dated 29th April, 2015. A perusal of the FIR shows that the respondent no.2 was invited by the applicant's son to the house, where the applicant and the applicant's sons and daughter-in-law were present. It is specifically stated by the respondent no.2 that all of them represented that they were doing extremely well in the diamond business and that they had very good relations with the traders, doing diamond business and that they had a company by the name of 'M/s.Helios Jewellery

Private Limited' at Surat, Gujarat and several other companies. The said persons are also stated to have disclosed that if they did business transactions with each other, both the companies would benefit financially. Respondent No.2 has stated that even on the next day all the aforesaid persons were present. Much emphasis is led by the learned counsel for the applicant on the word **'सर्वांनी'** i.e. 'all'. According to the learned Counsel **'सर्वांनी'** does not necessarily mean that the applicant was present in the meeting on the 10th January, 2011. The interpretation of the word **'सर्वांनी'** is matter of trial. It appears that pursuant to the representation made by the accused (including the applicant), there was a business deal between the respondent no.2 and the applicant's company – 'M/s.Helios Jewellery Private Limited' situated at Surat, Gujarat. It appears that diamonds sent to the said Company, were valued at US$ 7,10,519.27 i.e. equivalent to Rs.3,19,73,055/-. It also appears that there are forged documents in the form of 'Payment Remittance Instructions' (swift copy) of "Dhanlaxmi Bank Limited which were sent by the accused. The respondent no.2 *prima facie* appears to have been cheated for an amount of Rs.3,19,73,055/-. There is a decree passed by this Court in a Civil Suit filed by respondent

No. 2's Company against all the accused (including the applicant) and M/s. Helios Jewellery Private Limited. It appears that execution proceedings are pending.

8. Considering the material as aforesaid, there is sufficient ground to proceed against the applicant. Both the lower Courts have rightly rejected the discharge application. The application being sans merit, is rejected and is accordingly disposed of.

9. It appears that the trial has already been expedited by the Division Bench of this Court and the learned Metropolitan Magistrate, Mumbai, was directed to decide the case as expeditiously as possible and in any event by 31st July, 2014. The said time was extended from time to time by the Division Bench. Considering that there was a stay to the proceedings granted in the aforesaid application, the trial could not proceed. The trial court proceedings have already been expedited, by the Division Bench. The trial Court shall abide by the said direction.

10. At this stage, learned counsel for the applicant seeks

continuation of the stay granted by this Court in the aforesaid application. The said request is rejected.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.