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

Criminal Application [ABA] No.396 of 2016

(Sau. Hema w/o Pradip Kalaskar
vs.
State of Maharashtra, through P.S.O. City Kotwali, Amravati)

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	*Court's or Judge's Orders*

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Shri P.R. Agrawal, Advocate for the Applicant.
Shri N.R. Patil, A.P.P. for the Non-Applicant/State.

CORAM : S.B. SHUKRE, J.
DATE : 6th SEPTEMBER, 2016.

Heard the learned Counsel for the applicant and the learned A.P.P. for the State.

Perused the F.I.R. and also the copy of Search Report.

On going through the Search Report, dated 23/03/2013, it becomes crystal clear that this Search Report ought not to have been accepted by the bank in order to allow the husband of this applicant to mortgage the property i.e. Plot No.15, situated at Mouza Peth, Amravati as a security for repayment of loan granted to this applicant and her husband, who are respectively accused No.1 and accused No.2. It is mentioned in the Search Report that the learned Advocate did not personally visit the Sub-Registrar's Office, Amravati and that search was taken through her clerk, which revealed that there was no registered charge, lien, mortgage or encumbrance against the said property. The verification report of the clerk, if submitted to the learned Advocate, appears to be not obtained by the bank and, therefore, question arises as to how the then Bank Manager could have accepted this Search Report. It is stated in the F.I.R. albeit falsely that accused No.2 i.e. the husband of the applicant, submitted false title-deed to the Advocate taking the search and obtained a false Search Report showing the title of the property being clear and marketable. There is no mention, however, in the Search Report that any title-deed was placed before the learned Advocate and it was examined and verified for its correctness by her from the record available in the Sub-Registrar's Office. In any case, the allegations regarding submission of the false documents are made against the accused No.2, the husband of the applicant and not against this applicant. However, the husband of the applicant has been already granted anticipatory bail. The complainant bank has not questioned the grant of anticipatory bail to the husband of the applicant by moving the prosecuting machinery for cancellation of the bail so granted to accused No.2. There is nothing available on record from which it could be said that some action against the then Branch Manager has been taken by the complainant bank. The possibility of the Bank Manager, being hand in gloves with accused No.2, the husband of the applicant, is also not ruled out, in view of the facts and circumstances noted earlier. The complainant bank has also released the property in question from the mortgage and accepted another property from the husband of the applicant in mortgage. If the husband of the applicant had submitted false documents to the bank, its previous Officers ought to have been questioned on their omissions to properly verify the documents and take reasonable care. But, bank appears to have done nothing against those Officers. It could also have considered filing of a criminal complaint against them. But, it seems, nothing of this sort has been done. In the whole process, this applicant has been apparently victimized and, therefore, I am of the view that this application deserves to be allowed. Hence, the order.

The application is allowed and the interim anticipatory bail granted to the applicant by this Court on 22nd June, 2016 is hereby confirmed on the same conditions.

JUDGE

**sdw*

<u>C E R T I F I C A T E</u>

I certify that this order uploaded is a true and correct copy of the original signed order.

Uploaded by: S.D. Waghmare Uploaded on : 07/09/2016
P.A. to the Hon'ble Judge.