IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

903 CRIMINAL APPLICATION NO. 2075 OF 2017

GAJANAN S/O. PRABHAKAR MAPARI
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. P. R. Katneshwarkar, h/f Mr. P. M. Nagargoje.
APP for Respondent : Mr. A. A. Jagatkar.

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CORAM : **K. L. WADANE, J.**
DATE : 15th June, 2017.

ORDER:

. This is an application filed under the provisions of Section 439 of the Code of Criminal Procedure in connection with Crime No.88 of 2017, registered at Kranti Chowk Police Station, Aurangabad for the offences punishable under Sections 419, 420, 468 and 471 of the Indian Penal Code against the present Applicant and other Accused persons alleging that one Sunita Bodkhe, Sudhakar Bodkhe and Chayabai Bodkhe all residents of Gajanan Nagar, Aurangabad had filed pre litigation Dispute bearing Nos.19 of 2016, 20 of 2016 and 21 of 2016 respectively claiming compensation from HDFC ERGO Insurance Company before the Permanent Lok Adalat District Legal Aid Services, Aurangabad. The above said Claimants met with an accident on 5th April, 2015 with a 407-Matador while travelling in an auto-rickshaw. Accused No.1 / doctor treated them at his hospital namely Mohrir Accident Hospital and Nursing Home and Accused No.3 Mr. R. R. Shaikh a police constable conducted the spot Panchanama and recorded the statements of driver and the injured. Thereafter, the injured had filed the claim before the Lok Adalat. The present Applicant was appointed as an Investigator by HDFC, ERGO General Insurance Company Limited by letter dated 23rd November, 2015 to conduct survey and investigation pertaining to various insurance claims. The nature of his work was to collect certified copies of the documents pertaining to the case from the insured, claimants, police stations, Courts, RTO Locations and hospitals. According to the prosecution, the duty of the Investigator is to verify the registration number of the vehicle involved in the accident, genuineness of the injury certificate, to visit the place of offence, to verify the police reports and other documents relied by the Claimants. According to the prosecution, the present Applicant is appointed as an Investigator and his qualification appears to be of an Advocate. Mr. Katneshwarkar, learned counsel for Applicant submits that there are no direct allegations against the present Applicant as to the fabrication of the false record i.e. injury certificate, reports submitted to the police department and other relevant documents. All the material allegations are against the police officers, Dr. Mohrir and one Shaikh Latif. According to Mr. Katneshwarkar, learned counsel these are the persons, who are responsible for the alleged fabrication of the record. The duty or the role of the present Applicant is to give his opinion based upon the certified copies of the documents supplied to him.

2 The learned APP has referred certain documents i.e. statement of present Applicant, statement of Dr. Mohrir and the reports submitted by the present Applicant to the office of HDFC. By referring these documents, the learned APP has argued that without verification of the documents, without visit to the spot, without visit to the concerned hospital and without verifying the office copy of the injury certificates, he has submitted the report, which indicates that he has some important role to play in the matter and according to the prosecution, he has hand in glove with other Accused persons otherwise there was no reason for the Applicant to submit false reports to the HDFC. In this behalf, it is material to mention that the present Applicant in his statement dated 8th March, 2017 has specifically stated that one Mr. Manish Kothari, Advocate appearing in the Claim Petition No.743 of 2015 had inquired whether the Applicant has received the documents relating to the claim of one Minabai Bodkhe, on which the

Applicant replied in the affirmative. Thereon, Mr. Katneshwarkar, learned counsel say that all the necessary papers supplied to the Applicant and accordingly all the police papers relating to the medical treatment were given by Mr. Kothari, Advocate to the Applicant in the Court and the matter was settled between the parties for an amount of Rs.1,35,000/-. Similar was the things in respect of another claims i.e. Claim Nos.744 of 2015, 745 of 2015 and 72 of 2016, from which it appears that the Advocate of the Claimants have supplied the copies of the relevant documents to the Applicant and further it reveals from the record that without verification of the genuineness of the said documents, he has given his opinion to the HDFC. In this behalf, it is necessary to refer the statement dated 3rd February, 2017 of one of the Accused i.e. Dr. Mohrir. In his statement, he has stated that prior to 7 or 8 months one person by name Shaikh Latif (another Accused) had been to his hospital and informed that he is working with life insurance company and dealing with accident claims and he further requested that the doctor should give a discharge card for which he will be paid Rs.2,000/- per card. Accordingly, Dr. Mohrir given three discharge cards on which Shaikh Latif paid him Rs.6,000/-. Subsequently, after two months, Shaikh Latif brought 8 to 10 discharge cards and seal of Dr. Bhagwan Raut and Dr. S. S Deshmukh. Dr. Mohrir written the discharge summary on the said discharge cards and signed as Dr.Bhagwan Raut and Dr. S. S. Deshmukh and accepted Rs.4,000/-. So, apparently looking to the statements of these witnesses, Shaikh Latif was the main person behind it. Therefore, now it is necessary to clarify the connection of the present Applicant in reference to the offence. From the record it is seen that the allegations against the Applicant are that he never visited Sai Accident Hospital, Trimurti Chowk, Jawahar Colony, Aurangabad and the learned APP submits that during the investigation list of the hospitals within the Municipal Corporation limits of Aurangabad is collected and no name of the said Sai hospital found place in the list. At serial Nos.2 to 3, the name of another Accused Dr. Mohrir is appearing. So apparently it is seen that no hospital by name Sai Accident Hospital, Trimurti Chowk, Jawahar Colony, Aurangabad was in existence. In the light of the above, it is material to mention the report submitted by the present Applicant to the HDFC wherein he reported as follows:

> "I meet with claimant/injured Shaikh Rubina Shaikh Latif at her residence recorded her statement and obtained her signature on the statement. Claimant has also shown me Xerox copies of the Medical Bills and Discharge Card. There after I visited Shree Sai Accident Hospital, Trimurti Chowk, Aurangabad and

verified Medical Bills, Discharge Card. I have taken the signature of doctor and stamp of Hospital on the documents. The claimant was admitted in the Shree Sai Accident Hospital on 27/09/2016 and she was discharged on 07/10/2016. Claimant has expensed Rs.1,32,000/- for medical treatment. Verified copies of Discharge card, Medical Bills of claimant are annexed herewith. Claimant says that prior to the accident she was doing the private service in Aurangabad and earned income of Rs.7000/- per month. However she has not given me any concrete proof of income. As per PAN card bearing No. GLAPS8162L the age of the Injured/Claimant is 27 years. In view of this I am of the opinion that injured has valid age proof. The copies of the police papers was obtained from the Mukundwadi Police Station, Aurangabad and after scrutinizing all papers in my opinion the accident is genuine as per police paper and IV vehicle Motorcycle bearing No. MH 20 BM 1141 was involved in the said accident. The driver of the said IV vehicle is having valid DL. HENCE THIS INVESTIGATION REPORT FOR YOUR KIND PERUSAL."

3 The above report seems to be absolutely false because he has not collected office copies of the documents or at least xerox copies of the documents. It was necessary for the Applicant to collect copies of such documents from hospital, police authority and medical

stores from which such documents are produced by the respective Claimants. It apparently goes to suggest that the Applicant was also hand in glove with other Accused persons otherwise there was no reason for the Applicant to submit such report that too without verification of the documents. Looking to the nature of allegations, I am of the opinion that a fraud is played upon HDFC as well as on the Court. In such circumstances, I am of the opinion that the Applicant is not entitled for bail.

4 Mr. Katneshwarkar, learned counsel for the Applicant has relied upon the observations of the Supreme Court in the case of ***Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao***, reported in, ***2012 (9) SCC 512***, wherein it is observed by the Apex Court in para 16 that, it is the definite stand of the respondent herein that he has rendered Legal Scrutiny Reports in all the cases after perusing the documents submitted by the Bank. It is also his claim that rendition of legal opinion cannot be construed as an offence. Further it is observed in para 27 thus:

> "27. However, it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interests of the client and it is the lawyers responsibility to act in a manner that would best advance the interest of the client.

> Merely because his opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and cannot be charged for the offence under Sections 420 and 109 of IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link or evidence to connect him with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein."

5 I have gone through the facts and observations of the aforesaid case wherein a wrong opinion given by the legal adviser of an institution is not considered as a crime. However, in the present matter, the Applicant without verifying the facts, without visiting the concerned hospitals gave false report. This is not the opinion but it is absolutely false report submitted by the Applicant. One can understand after scrutinizing of document if Advocate gave wrong opinion based upon wrong legal notion then definitely it will not be an offence. However, in the present matter, the Applicant has deliberately

submitted a false information to the financial institution i.e. HDFC. Hence, the observations of the Supreme Court in the case cited supra are inapplicable to the facts of present case.

6 Hence, the bail application is rejected.

[K. L. WADANE, J.]

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