IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5295 OF 2004

Mr. Abdul Ismail K.M.
Aged 38 years, Occ.: Business
Residing at M/s K.M. Stores,
Kamal Mansion, Groud Floor,
Arthur Bunder Road, Colaba,
Mumbai – 400 005 .... Applicant

Vs.

The State of Maharashtra .... Respondent
(At the instance of Panvel
Railway Police Station)

Mr. Ganesh Bhujbal, Advocate for the Applicant.
Mr. S.R. Agarkar, A.P.P. for the respondent- State.

Coram : Smt. R.P. SondurBaldota, J.
Date : 9th February, 2017

JUDGMENT :

1 This petition is directed against the order dtd. 30th August, 2004, by which the Sessions Court rejected the applicant's application for discharge from the proceedings.

2 The applicant was arrested by Staff of Panvel Railway Police Station on 6th November, 2003 for the offences punishable under Sections 489(A), (B), (C) read with Section

120(B) of Indian Penal Code. Later, charge-sheet was filed in the Court of Judicial Magistrate First Class, Railway Court at Kalyan vide C.C. No.363/2003 on 23rd December, 2003. The prosecution case stated in brief is that the complainant, a Police Hawaldar lodged F.I.R. vide A.C.R. No.9/2003 on 28th September, 2003 with Panvel Railway Police Station stating that while he was on duty alongwith his police staff at Panvel Railway Station and checking the railway platforms at about 5.45 pm, he noticed accused no.1 carrying a bag in a suspicious manner. On being confronted, he started running away. Then he was intercepted and searched. His bag was found containing counterfeit notes worth Rs.2,50,000/-. The mobile Phone no.9892498950 in his possession was found containing Prepaid Airtel Sim-Card No.89919202100038-65809. During the course of investigation, the police found that the Sim-Card had been sold by the applicant not directly to accused no.1 but to a South African National by name Govender Vishurani. On these facts, the applicant came to be arrayed as an accused in the offence of possession of counterfeit notes.

3 The applicant carries on business of STD booth. He had admittedly sold the Sim-Card to a South-African National abovenamed on the basis of the passport produced by her. Beyond that there is no material whatsoever on record to connect the applicant to the offence alleged. There is nothing on record to indicate that the applicant was connected in any

way with accused no.1. The Sessions Court however, dismissed the application for discharge on the ground that the applicant had failed to explain as to how the Sim-Card sold by him came into the hands of accused no.1. The relevant observations of the Sessions Court for dismissal of the application read as under:

> "The nature of offence is very sensitive and serious. The offence of such nature are committed with utmost secrecy and with the help of latest information and technology. It has also reflected on record that the sim-card was sold by the accused/applicant on internet. Accused failed to explain his selling and subsequently how the said sim-card was sold to accused no.1, Mohd. Yusuf Shikh. This has really caused anguish to the police that with the help of this sim-card and likewise accused/ applicant was part and parcel of criminal conspiracy to put the fake currency notes in the circulation. Accused no.1 Mohd. Shaikh is from Kerala. Present accused is from Maharashtra. The Sim-card sold to South African National. All these link categorically goes to show that more than intention and i.e. criminal conspiracy."

4 The reason stated in the impugned order for rejecting the application is in fact a strange reason. It was not for the applicant to explain as to how the Sim-card sold by him to an South-African National went into the hands of accused no.1. It was the duty of Police to investigate into this aspect of the matter and not seek any explanation. In fact the observation that the applicant is from Maharashtra, accused no.1 is from

Kerala and Sim-card has been sold to South-African National is the circumstance should have been in favour of the applicant and not against the applicant. Not only there is no material on record to connect the applicant either to accused no.1 or to the offence but there is also no material to connect the South African National to accused no.1. Hence, the application is allowed in terms of prayer clause (b).

(Smt. R.P. SondurBaldota, J.)