IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [ABA] No.549 of 2016
[Ravi Suryalal Jaiswal & another Vs. State of Mah, Sitabuldi PS, Nagpur & another]

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

Mr. A.S. Mardikar, Sr. Adv., with Mr. S.G. Joshi and Mr. A. Mirza, Advs., for the applicants.
Ms. Kalyani Deshpande, APP for respondents- State.
Mr. J. M. Gandhi, Adv., for the intervener.

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CORAM : A. S. CHANDURKAR, J.

DATE : 31st October, 2017

The applicants who apprehend their arrest in connection with Crime No. 246/15 registered at Ganeshpeth Police Station, Nagpur, for the offences punishable under Sections 406, 420, 465, 467 and 471 read with Section 34 of Indian Penal Code have moved the present application under Section 438 of the Code of Criminal Procedure, 1973 [for short "the Code"].

On the basis of report lodged by the father of the applicant no.1 – Suryalal Jaiswal, Crime No. 246/15 came to be registered. In that report, it was stated by the complainant that he along with his wife – Shashikala and two sons – the applicant no.1 and Rahul had purchased various properties. Though these properties were purchased in joint names, these purchases were possible on account of the efforts taken by the complainant. The applicant no.1 in a planned manner made the complainant and his wife Directors in M/s. Shashi Bio Fuels Pvt. Ltd., and he became the authorized signatory. The complainant and the applicant no.1 were shown as Directors in the Memorandum of Association as well as the Articles of Association. By scoring off the name of his wife in some of the documents, the Applicant No.1 availed Cash Credit Limit of Rs. 2 crores 20 lakhs and a Term Loan of Rs.1,80,00,000-00 in the name of the said Company. The aforesaid properties came to be duly mortgaged. As the amounts borrowed were not repaid, proceedings for recovery were initiated by the Bank. The Applicant No.1 in connivance with the officers of Shikshak Sahkari Bank disposed of the properties owned by the complainant, his wife and other son – Rahul. Though properties were valued at more than Rs.20 crores, they were disposed of for a lesser amount. By forging various documents including a Board Resolution, the aforesaid acts were committed by the applicants. Applicant No.2 without having any source of income was shown to have purchased one of the properties in a Court auction. On that basis, the offence in question came to be registered.

It is submitted by Shri Anil Mardikar, learned Senior Counsel for the applicants, that the dispute primarily was between the complainant – father and one of his sons – applicant no.1. Though it was stated in the complaint that the alleged acts of forgery and auction of various properties were were conducted without due knowledge being given to the family members, same was not correct. Proceedings for recovery of the loan amounts were filed in the year 2007 itself and the family members including the complainant had sought legal redress in that regard. The properties were disposed of after issuing Public Notices in the year 2010. The sale-deeds executed in the year 2010-11 were never challenged nor were any steps taken by the complainant to repay the loan amount. It was submitted that despite grant of sufficient time to the Investigating Officer, no material, whatsoever, had been collected to implicate the applicants in the alleged offences. The applicant no.1 was a Director of the Company since its inception and the allegation that the name of applicant no.1's mother had been scored off from the document titled as "Agreement to Mortgage Properties" was without any basis. It was then submitted that the applicants had challenged the lodging of the First Information Report by filing Criminal Writ Petition No. 716 of 2015. In those proceedings, it was observed that present applicants had co-operated during investigation. Pursuant to the interim orders passed granting protection, the applicants had attended the office of the Investigating Officer for almost twenty-seven times and had replied various questionnaires that were directed to be answered by the Investigating Officer. Relying upon the decision in **Siddharam Satlingappa Mehtre Vs. State of Maharashtra & others** [(2011) 1 SCC 694], it was submitted that there was no reason, whatsoever, to arrest the present applicants. The passports of the present applicants were already surrendered before this Court. Despite passage of considerable time since lodging of the First Information Report, the charge-sheet had not been filed. The statement that applicants were not co-operating in the investigation had no substance, inasmuch as applicants could not be expected to admit commission of any offence as intended by the Investigating Officer. For said purpose, reliance was placed on the judgment dated 10th October, 2017 passed by the Honourtable Supreme Court in Criminal Appeal No. 1759 of 2017; decided on 10th October, 2017 [**Santosh Dwarkadas Fafat Vs. State of Mah.**]. It was, thus, submitted that the interim protection granted earlier deserves to be confirmed.

The application was opposed by Ms. Kalyani Deshpande, learned APP for the State. It was submitted that as per the report lodged by the complainant, a prima facie case had been made out against the applicants. The statement of the Notary had been recorded in which he had stated that the alterations made in the Agreement to Mortgage the property were not in his presence or either at his behest. Though the applicants had attended the office of Investigating Officer, they had not co-operated in the investigation, due to which the charge-sheet could not be filed. It was, thus, submitted that considering the gravity of the offence, the applicants were not entitled for any protection.

Shri J. M. Gandhi, learned counsel for the complainant, sought to assist the Additional Public Prosecutor while opposing the grant of protection to the applicants. At the outset, he submitted that the directions issued in the proceedings filed by the applicants under Section 482 of the Code not to arrest them could not have been so issued in view of the judgment of the Honourable Supreme Court in **The State of Telangana Vs. Habib Abdullah Jeelani & others** [2017 (2) Mh.L.J. (Cri.) 481]. On the basis of those directions, the applicants enjoyed protection though they were not entitled for the same legally. It was then submitted that the applicant no.1 in a planned and designed manner took various steps, due to which the complainant and other family members lost their valid title to the suit properties. He submitted that the applicant no.1 was not a Director of Shashi Bio Fuels Ltd., on 27th July, 2004. All family members were kept in dark as to the proceedings that were initiated for recovering the dues of the Bank. Without their knowledge and by acting in collusion with the Bank officers, a show was made that those properties were auctioned and disposed of. The properties were sold at a value less than its market price. It was then submitted that on the basis of the statement of the Notary, it was clear that the applicant no.1 who was the beneficiary of the transaction was responsible for creating that document. It was then submitted that the sale of properties were in contravention of statutory provisions. The applicant no.2 who was merely a housewife had purchased immovable property worth Rs.1.46 crore. Though the complainant's wife had expired in the year 2006, her name was shown as a Director of the said Company. Though the applicants were granted interim protection, they had not co-operated with the investigation and hence had no right to seek protection. The learned counsel placed reliance on the following decisions:-

1. **<u>Vasu P. Shetty Vs. Hotel Vandana Palace & others</u>** [(2014) 186 Comp Cas 82 (SC)],

2. **<u>Shri Deepak Mahesh Jaiswal & another Vs. State of Mah</u>.** [2013 ALL MR (Cri) 4369],

3. **<u>Abdul Sajed Abdul Sattar Vs. State of Mah. & another</u>** [2011 ALL MR (Cri) 1708],

4. **<u>Smt. Ida Nunes Joseph Nunes Vs. State</u>**

<u>of Goa</u> [2006 ALL MR (Cri) 384],

5. **<u>Machchindra Tukaram Koli & others Vs. State of Mah</u>.** [2008 ALL MR (Cri) 3142],

6. **<u>Haripal Singh Vs. State of Punjab</u>** [2010 Cri. L.J. 4322],

7. **<u>State of Orissa Vs. Debendra Nath Padhi</u>** [(2005) 1 SCC 568], and

8. **<u>Bharat Parikh Vs. Central Bureau of Investigation & another</u>** [(2008) 3 SCC (Cri) 609].

I have heard the learned counsel for the parties at length and I have also gone through the police papers.

Certain facts which are found relevant while considering the prayer as made by the applicants are that after the First Information Report was lodged, the same was challenged by the applicants by filing Criminal Writ Petition No. 1004 of 2015 under Section 482 of the Code. While issuing notice, the Division Bench of this Court on 23rd December, 2015 directed the Investigating Officer not to take any coercive steps if the applicants herein co-operated with the Investigating

Officer. On 4th March, 2016, the Division Bench passed the following order:-

> "Heard.
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> The investigation is in progress and learned Addl. P.P. states that the petitioners are co-operating in the matter. Learned counsel for respondent No.3 Shri J. B. Gandhi wants to demonstrate that the petitioners are aggravating the situation.
>
> At this stage, as the petitioners appear to be co-operating with the investigation, we find it convenient to adjourn the matter to 18.3.2016.
>
> Put up with connected petition."

On 1st August, 2016, the aforesaid Writ Petition came to be withdrawn with a liberty to apply for discharge if the charge-sheet was filed. With a view to enable the applicants to take recourse to the remedies available to them in law, it was directed that no coercive steps be taken against them for a period of ten days. Thereafter, the applicants applied before Sessions Court under Section 438 of the Code for grant of protection. The Sessions Court by order dated 18th August, 2016 rejected that application. Thereafter, the applicants filed the present application and on 22nd August, 2016, this Court directed that no coercive steps be taken against the applicants till 31st August, 2016, subject to they co-operating with the Investigating Officer. On 21st December, 2016, the applicants were directed to attend the office of Investigating Officer on 24th December, 2016 and 25th December, 2016 between 10.00 a.m., and 2.00 p.m. and thereafter between 11.00 a.m., and 1.00 p.m., for a period of one week. By order dated 23rd December, 2016, the applicants were directed to attend the office of Investigating Officer on 2nd January, 2017. They were also directed to deposit their passports in the Court. On 15th March, 2017 and 21st July, 2017, the Investigating Officer was directed to file an affidavit with regard to the status of the investigation. Pursuant thereto, affidavits have been filed by the Investigating Officer. In the affidavit dated 26th September, 2017, it is stated by the Investigating Officer that though the applicant no.1 had appeared before the Investigating Officer, he did not co-operate with the investigating agency. The applicants were given a questionnaire, but vague answers were given. In the aforesaid backdrop, the present application was heard.

In *Siddharam Satlingappa Mhetre* [supra], the Honourable Supreme Court while considering the provisions of Section 438 of the Code has observed that while exercising discretion in that regard, a balance has to be struck, inasmuch as there should be no prejudice to free, fair and full investigation nor should there be any unjustified detention. It has been further observed that arrest should be for justifiable reasons and not because it is lawful to do so. In the present case, I find that since the lodging of the First Information Report till the present application has been heard, a time of almost twenty months has passed. In this period, there was an initial direction that no coercive steps be taken against the applicants, subject to their co-operating with the investigation. Thereafter, specific directions were issued to the applicants to appear before the Investigating Officer, pursuant to which questionnaires were issued to the applicants seeking their response. Their passports were directed to be deposited in Court. The record indicates observations of the Division Bench on the basis of statement made by the learned Additional Public Prosecutor that the applicants had co-operated with the investigation. The record indicates that the applicants appeared before the Investigating Officer on about twenty-seven occasions. In the affidavits filed by the Investigating Officer pursuant to the directions issued by this Court, except for stating that the applicants were not co-operating in the investigation and giving vague answers, no specific reason for seeking their custodial interrogation has been specified. For this entire period also, charge-sheet has not been filed. The incriminating documents, such as “Agreement with an Undertaking to Execute the Deed of Legal Mortgage” dated 29th June, 2004, Mortgage-Deed dated 27th July, 2004 as well as resolution passed by the Company, are with the Investigating Officer. In the aforesaid backdrop, I find that the applicants have joined the investigation and have responded to the questionnaires put to them. Their passports have been deposited in Court and hence possibility of their absconding is taken care of. These factors, in my view, are material factors which cannot be ignored while exercising discretion in favour of the applicants.

In *Santosh Dwarkadas Fafat* [supra], the Honourable Supreme Court while considering the statement made in the affidavit filed by the Investigating Officer in that case that there was no co-operation by the applicant therein observed that custodial interrogation could not be for the purpose of obtaining any confession. It further held that merely because the applicant therein did not confess, it could not be said that he was not co-operating with the investigation. These observations aptly apply to the present case. It is not the grievance of the Investigating Officer that the applicants have not appeared before him despite being so directed. If the Investigating Officer finds that the answers given by the applicants to the questions put to them are not as expected by the investigating agency or are vague, that cannot be the justification for seeking their custodial interrogation.

Though the learned counsel for the informant was critical of the order of protection granted by the Division Bench against coercive action being taken against the applicants and for which he placed reliance on the decision in *The State of Telangana* [supra], I find that in the present case during pendency of the application, directions were issued to the applicants to appear before the Investigating Officer and also to deposit their passports. By these interim directions, the Investigating Officer was not precluded from making any investigation. Hence, that contention urged on behalf of the informant cannot be accepted.

In so far as the report of the informant is concerned, the same indicates that certain documents were tampered with as a result of which the properties of the informant and his other son – Rahul stood mortgaged. This was done at the instance of applicant no.1 without the consent of the informant. These acts resulted in sale of properties at a lesser price and purchase of one of those properties by applicant no.2 who had no independent source of income. I find that considering the nature of allegations and the fact that all incriminating material has been seized by the investigating agency, no case has been made out warranting custodial interrogation of the applicants. No useful purpose would be served by directing arrest of the present applicants. Instead, while exercising discretion in their favour, appropriate conditions can be imposed in that regard. I, therefore, do not find it necessary to refer to each decision relied upon by the intervenor. .

In view of aforesaid, the following order is passed:-

In the event of applicants' arrest in connection with Crime No. 246/15 registered at Ganeshpeth Police Station, Nagpur, for the offences punishable under Sections 406, 420, 465, 467 and 471 read with Section 34 of Indian Penal Code, they shall be released on bail on furnishing a Personal Bond of Rs.20,000-00 [rupees twenty thousand only] each with one surety each in the like amount. The applicants shall attend the concerned Police Station on 13th November, 2017 between 11.00 a.m., and 1.00 p.m., and thereafter as per the directions of the Investigating Officer. The passports that are deposited in this Court shall be made over to the Investigating Officer who shall retain the same till filing of charge-sheet. No steps be taken by the applicants to influence the prosecution witnesses.

The observations made in this order are only for deciding the present application, which is allowed in aforesaid terms.

Judge

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