IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APPA) NO. 807 OF 2016

Sushil s/o Vishwanath Hiwale ***V/s*** State of Maharashtra Thr. PSO PS. Bhandara, Dist. Bhandara and another

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Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

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Shri P.S. Tiwari, Advocate for appellant.
Shri A.M. Ghare, Advocate efor Respondent No.2.
Shri S.S. Doifode, A.P.P. for State.

CORAM : PRASANNA B. VARALE AND MURLIDHAR G. GIRATKAR, JJ.

DATE : 04/07/2017.

Heard Shri Tiwari learned counsel for applicant.

The applicant is before this Court seeking quashment of the First Information Report lodged at Bhandara Police Station dated 12.4.2015 vide Crime No. 102/2015 for the offeneces punishable u/s 420 r/w 34 of IPC.

The submission of the Mr. Tiwari is two fold. It is firstly submitted by Mr. Tiwari learned counsel that the First Information report lodged against applicant is vague and ambiguous as it states nothing about any misdeed allegedly committed by the applicant. Secondly Mr. Tiwari submitted that the applicant is made a scape-goat. Neither the directors of the said District Central Cooperative Bank are made an accused nor any other high ranking officer is made an accused.

In so far as first submission of the learned counsel Mr. Tiwari is concerned, we have gone though the First Information Report, as well as replies filed by the State. The First Information Report specifically states that the three officials including the applicant were working at Bada Bazar Bhandara Branch of the Bhandra District Central Cooperative Bank, Bhandara at the relevant period. Initially when we asked Mr. Tiwari to give us details of the working period of the applicant at the said branch, Mr. Tiwari submitted that due to short of instructions, he is unable to tell the period but the applicant was working with Bhandara Bada Bazar, Branch Bhandara till 11th September 2014 and thereafter he was transferred to Ambadi Branch.

On a perusal of the report we find that the applicant joined the said bank in the year 1992 and was working at Bada Bazar Bhandara Branch from 1992 till his transfer i.e. till 11th September 2014. The First Information Report further revealed that it is not only the applicant who is referred to as accused in the report but there are the other officials namely one Mr. Avinash Nashine who is the Branch Manager working at the said Bada Bazar Branch from his initial date of appointment i.e. 26.11.2016 and he was working in the said branch from the year 2011. Then one Mr. Bharat Kumbhare who was also working as the Bank employee, the report then states the name of Mr. Bharat Kumbhare who was working as Pigmy Agent. The report states that Mr. Bharat Kumbhare was collecting the amount from the depositors as agent. Initially he used to deposit the amount regularly by collecting the amount from the depositors, but subsequently it revealed that the mischief was played in respect of the amount collected from the Depositors. The amount so collected was not in turn deposited in the bank and an excess amount was shown to be withdrawn against the security.

It revealed that the mischief was played by three accused persons namely Mr. Avinash Nashine, Bharat Kumbhare and the applicant i.e. Mr. Sushil Hiwale. The report states that on finding that the bank was subjected to defraud to the tune of Rs. 85,16,331/-, the steps to recover the said amount was initiated. Accordingly certain amounts were recovered from the accused persons. The report then states that the receipt books were also missing. In the in-house enquiry and audit, it further revealed that though certain receipts were shown of having signature of the employees, the amount against these receipts was not deposited in the bank. The report also states that 11 of such deposit receipts were still missing and there was reference of the mischief played against the 100 deposit receipts.

In view of the submission of Mr. Tiwari the learned counsel, we have gone through the reply filed by the State. The perusal of the material placed on record alongwith the reply show that the firm of Chartered Accounts undertook the exercise of scrutiny of the material. In the report of the firm dated 13/9/2016, it revealed that the present applicant and other accused persons played mischief. Insofar as, the applicant is concerned it would be necessary to referred to the finding of the Chartered Account. It reads that the applicant was working as Accountant and was possessing user I.D. the number of the said user I.D. is also referred to in the document. The Charter Accountant found that the applicant was responsible for the misdeed namely using the public fund for self-gains and profits, cheating, forgery and misappropriation of funds by transferring amount of maturity of deposit to non-deposit holder's account, responsibilities not carried out effectively and non-communication of any problems in operations, instances of non-compliance with the code of conduct or other policy violations or illegal activities that are noticed by him to the appropriate level of management. Though it was an attempt the learned counsel Mr. Tiwari to submit before this Court that the bank with an ulterior motive only picking up some personnel whereas the other employees are given a clean chit. From the reply filed by the State, we find that this submission of Mr. Tiwari is unacceptable. The reply filed by the State dated 29.6.2017 show that though initially there were 3 accused referred in the first information report on receiving the report investigation agency proceeded with the investigation and found that there are certain other accused persons who played their role in the mischief. These persons are not only at the level of clerical staff but then there are certain others persons like the Branch Manager, Assistant Accountant. It is stated in reply that as many as the role of 9 accused is unearthed and these persons were added subsequently as an accused and arrest of these persons was also effected. Mr. Tiwari submitted that there is only vague material. We are unable to accept the submission of Mr. Tiwari, the learned counsel of the applicant on the back drop of the statement made in the reply filed by the State. The State in the reply states that in the investigation it is found that the mischief was played and the fraud was committed by use of I.D. and by mischief played in the computerized transaction with an unauthorized use of I.D.. It is also stated in the reply that investigating agency has recorded as many as 23 statement of the witnesses including the depositors, investors, customers, employees of the bank and the Charter Accountant. From the material presented before us in the form of report of Charter Accountant and in the form of affidavit in replies filed by the State, we are of the opinion that the petition is merit-less. The petition thus being merit-less deserve to be dismissed and the same is accordingly dismissed.

The learned counsel Mr. Tiwari pray for liberty to take appropriate steps in view of the statement made in the reply that Investigation

Agency has concluded the investigation and filed charge sheet. Mr. Tiwari submits that applicant be permitted to file proceedings including seeking discharge. If the petitioner is so advised, he is at liberty to avail the said remedy.

JUDGE **JUDGE**

Nandurkar