

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

CRIMINAL APPLICATION NO. 463 of 2007

Krushnarao S/o Shankarrao Patil,
age 62 years occupation Pensioner
R/o Golibar Tekdi, Kalika Mandir, Utkarsh Colony,
Dhule Taluka and Dist. Dhule

...APPLICANT

VERSUS

1. The State of Maharashtra
Through: Public Prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad.
2. Mohan S/o Dhavalu Bagul,
age 43 years occupation service
R/o Sakri Panchayat Samiti Quarters,
Sakri Taluka Sakri Dist. Dhule

...RESPONDENTS

Mr C.R. Deshpande, Advocate for applicant.

Mr K.S. Hoke-Patil, Additional Public Prosecutor for Respt./State

CORAM : PRASANNA B. VARALE, AND

SMT. VIBHA V. KANKANWADI, JJ.

DATE : 04th January 2018

ORAL JUDGMENT (PER PRASANNA B. VARALE, J.) :

Heard Mr C.R. Deshpande, learned Counsel for the
applicant.

2. Applicant is before this Court seeking quashment of first information report in crime No. 176 of 2004 registered at Sakri Police Station Dist. Dhule for the offence punishable under section 408 of the Indian Penal Code and the proceedings in Regular Criminal Case No. 32 of 2005 pending before the learned Judicial Magistrate First Class, Sakri.

3. Mr Deshpande, learned Counsel appearing for the applicant, invited our attention to the first information report placed on record at Annexure "A". Mr Deshpande submitted that the applicant was working as Project Officer in the Scheme of Integrated Child Development Scheme at Sakri in the year 1998-1999. Mr Deshpande submitted that the report was lodged against applicant alleging that the applicant while discharging his duty as a Project Officer in the year 1998-1999, there was a scheme of distributing sewing machines to beneficiaries. The amount of 10% of the value of the sewing machine was to be recovered from these beneficiaries. The applicant was expected to recover an amount of Rs. 133/- from each of the beneficiaries. The applicant, instead of recovering amount of Rs. 133/-, collected amount of Rs. 200/- from each beneficiary. Learned Counsel Mr Deshpande submitted that in the report itself, it is stated that the applicant returned amount of Rs. 50/- to each of the

beneficiaries, but failed to repay amount of Rs. 17/- to each of the beneficiaries. It is alleged that the applicant failed to return amount of Rs. 17/- against each beneficiary and against all these 93 beneficiaries. Thus, an amount of Rs. 1581/- in total was an act of embezzlement of the amount by the applicant. Mr Deshpande, learned Counsel submitted that the report was lodged against applicant under section 408 of the Indian Penal Code in 2004. He submitted that the report was lodged on 10th December 2004 for the alleged misdeed of the applicant of year 1999. Learned Counsel Mr Deshpande submitted that bare perusal of the report would show that the report is lodged at a very belated stage. Learned Counsel then submitted that there is no explanation offered in the report about the delay of nearly five years in lodging the report. Learned Counsel then submitted that for the very act of non-refund of the amount, the applicant was subjected to departmental proceedings. Mr Deshpande invited our attention to an order dated 11th August 2004. Mr Deshpande submitted that the departmental proceedings initiated against the applicant with the charges of failure in refund of the amount. Mr Deshpande then submitted that the applicant faced a departmental enquiry. He submitted his explanation to the authority in the departmental enquiry. Mr Deshpande then submitted that the

applicant was punished in the departmental enquiry proceedings by order of the State Government with concurrence of the Public Service Commission. The applicant was faced with deduction of Rs. 100/- per month from his salary/pension account for five years. Mr Deshpande submitted that the amount so recovered from the applicant is nearly Rs. 6000/- i.e. more than the amount of the alleged embezzlement against the applicant. Thus, Mr Deshpande submitted that the report, which is lodged against applicant at a belated stage, is unsustainable. Moreover, the applicant faced two proceedings simultaneously. Out of these two proceedings, the applicant was awarded with the punishment in the departmental enquiry. Mr Deshpande submitted that the amount recovered from the applicant is more than the amount of Rs. 1581/- and, as such, no loss is caused to the State Government. Mr Deshpande submits that at the time of filing of the application, the applicant was retired person, against whom recovery was sought for in a departmental enquiry. It is, thus, submission of Mr Deshpande that the proceedings initiated against the applicant is an abuse of process of law and is clearly unsustainable.

4. Learned Addl. Public Prosecutor opposes the application.

5. We have gone through the material placed on record.

Learned Counsel Mr Deshpande for the applicant was justified in submitting that though it is alleged that incident took place in the year 1999, the report is lodged in the year 2004 and there is no explanation in the report. Mr Deshpande was also justified in submitting that the applicant faced two proceedings simultaneously. Mr Deshpande was also justified in submitting that the applicant was subjected to punishment in the departmental enquiry, whereby there was periodical recovery from the applicant at the rate of Rs. 100/- per month for the period of five years and the amount was much more than alleged amount of embezzlement. In our opinion, no purpose would be served by maintaining the proceedings against the applicant. Learned Counsel for the applicant has made out a case. Learned Counsel was justified in submitting that initiation of the proceedings or its continuation would be abuse of process of law.

6. In the result, the application is allowed in terms of Prayer Clause "B". Rule made absolute accordingly.

7. Application is disposed of accordingly.

(SMT. VIBHA KANKANWADI)
JUDGE.

(PRASANNA B. VARALE)
JUDGE.