

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

CRIMINAL APPLICATION NO. 1848 OF 2018

Arvind s/o Dhirendra Mandal,
Age: 36 years, Occu. Business,
R/o Ram-laxman Niwas, Plot No.7,
Bhumkar Nagar, Wakad Vasti,
Pune, Dist. Pune.

... **APPLICANT**
(Orig. Accused)

VERSUS

- 1) The State of Maharashtra,
Through Investigation Officer,
Kotwali Police Station, Ahmednagar.
- 2) Bilal s/o Salim Chavan,
Age: 30 years, Occu. Business,
R/o U-501, Rohan Mithila,
Vaman Nagar, Pune,
- 3) Satish s/o Vishwanath Raut,
Age: 40 years, Occu. Business,
R/o 53/3, Shantasadan,
Burudgaon Road,
Tq. and Dist. Ahmednagar.

... **RESPONDENTS**

...

Mr. S. D. Jaybhar, h/b Mr. D. R. Jaybhar, Advocate for Applicant.
Mr. M. M. Nerlikar, APP for Respondent No.1 / State.
Mr. G. R. Syed, Advocate for Respondent No.2.
Mr. S. S. Bora, Advocate for Respondent No.3.

...

CORAM : **T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 09th October, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of FIR No.204 of 2018, registered with Kotwali Police Station, District Ahmednagar, for the offences punishable under Sections 406 and 420 of the Indian Penal Code.

3 The crime is registered on the basis of report given by one Satish Raut. He and his cousin Subhash are in the business of giving centering material used in construction activity on lease basis. It is the contention of first informant that on 1st March, 2016, Accused Bilal Chavan came to them and requested for giving centering material on lease basis. He represented that he was to use the centering material for making construction in Survey No.43, Airport Road, Ahmednagar. 1500 centering plates were to be given on lease basis and Bilal was to pay rent of Rs.30/- per plate per month. 1400 plates were handed over on 2nd March, 2016 as there was overload in the truck and 100

plates were removed from the truck.

4 In March 2017, Bilal did not pay rent in respect of centering plates. He then started avoiding the Complainant. When inquiry was made about where the plates were kept, he informed that the plates were taken to Shamshabad, Hyderabad. The Complainant then went to Shamshabad in April 2017. No plates were there on the site shown by Bilal. On inquiry, they learnt that the plates were handed over to Sunil Hitech Company and they were passed on to third party and the plates were being used in Telangana State. As the plates were not available with Bilal, FIR came to be given. The present Applicant had taken the custody of the plates for Sunil Hitch Company and he had handed over the plates to others and he is shown as accused in the matter.

5 The submissions made show that at the time when bail was granted in Sessions Court, undertaking was given by Bilal and the present Applicant to see that the rent for using the plates is given to the Complainant. The submissions made show that all the plates are now handed over to the first informant and he only wants to recover the rent in respect of use of centering plates.

6 The submissions made show that the centering plates were handed over by the first informant to Bilal and not to present Applicant. There was agreement between Bilal and the first informant and there was no direct agreement between the first informant and the present Applicant. It is true that the present Applicant used the plates, but he used the plates under the agreement, which he had with Bilal. In view of these circumstances, it cannot be said that the present Applicant had knowledge that the plates were owned by the first informant and not by Bilal. There is no glimpse about it in the agreement, which was made by the Applicant with Bilal. It can be said that by using criminal action, the first informant is trying to recover the amount from the present Applicant. If undertaking is given in the Court by the Applicant for getting bail, that undertaking can be used by the party like Bilal inaction, which Bilal can take against the present Applicant. It will be abuse of process of law, if the present Applicant is made to face the trial for aforesaid offences. In the result, the following order is passed:

ORDER

- I. The application is allowed.

- II. Relief is granted only to the extent of present Applicant in terms of prayer clause (D) and also in respect of charge-sheet filed against the present Applicant in Crime No.204 of 2018, registered with Kotwali Police Station, Ahmednagar.
- III. Amendment be carried out immediately.
- IV. Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI, J.]

[T. V. NALAWADE, J.]

ndm