

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPICATION NO. 5841 OF 2014

Rajesh s/o. Swarupnarayan Bhakkad,
Age 41 years, Occu. Business,
R/o. Ajintha Nagar, Deulgaon Road,
Jalna, Dist. Jalna.

....Applicant.

Versus

1. State of Maharashtra
Through PI, MIDC CIDCO Police
Station, Aurangabad City,
Tq. & Dist. Aurangabad.

2. Prabhakar s/o. Kaparsing Gaikwad,
Age 45 years, Occu. Security Guard,
R/o. House No. G-7/5, Navjivan Colony,
N-11, CIDCO, Aurangabad.

....Respondents.

Mr. R.R. Mantri h/f. Mr. R.R. Sancheti, Advocate for applicant.

Mrs. D.S. Jape, APP for respondent No. 1/State.

Mr. N.S. Ghanekar, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.**

DATED : 02/08/2018.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The proceeding is filed under section 482 of Criminal Procedure Code for relief of quashing of chargesheet No. 46/12 dated 9.3.2012 filed in the Court of Judicial Magistrate, First Class, Aurangabad by MIDC CIDCO Police Station, Aurangabad. The case is filed in F.I.R. No. 180/2011 for offences punishable under sections 411 of Indian Penal Code against the present

applicant. Against other accused, the case is filed under sections 380, 381, 461 etc. of IPC. Both the sides are heard.

2) The crime is registered on the basis of report given by watchman of Garware Polyester Ltd., Chikhalthana, Aurangabad. On 14.11.2011 at about 4 to 4.30 a.m. when the watchman felt that somebody had entered the campus of premises and probably it was an attempt of theft, he went towards that side. He contacted the superior officers and informed that somebody had entered the premises and there was possibility of commission of offence. Some officers rushed to the spot and all of them then went to the godown of the company. They noticed that shed of godown was in open condition and three film rolls manufactured by Garware Company were lying outside of the godown. Then they saw that Harising Ghusinge who was employed in the company was coming out from the godown. He was taken in custody. He had brought I-Con Ford vehicle bearing No. MH-20/Y-4881 and it was kept in parking lot of the company. They went with him towards the vehicle and they noticed that he had already kept four film rolls in the vehicle. Thus, he had removed seven film rolls worth more than Rs.70,000/-. They gave report on the same day to police and the said employee was handed over to police. During interrogation, the aforesaid employee

supplied information that he had committed similar offences in the past and he had sold those film rolls to the present applicant. It was also noticed that the stock of the godown was not tallying with the register and such incident had taken place in the past also. Due to this information, police went to the present applicant. Police first searched the residential place of the accused, but nothing could be recovered. They searched shop of the applicant, but nothing could be recovered. During investigation, Call Data Record (CDR) is collected to show that from 20.9.2011 to 26.10.2011 the present applicant was in touch with aforesaid employee of Garware Company. On the basis of this material, chargesheet is filed.

3) The aforesaid discussion shows that on the basis of information supplied by the main accused, the present applicant is made accused in the case and he is accused for offence punishable under section 411 of IPC. The submissions made and the record show that even statement under section 27 of Evidence Act was not recorded of the main accused. Further, nothing incriminating is recovered from the possession of the applicant. Only on the basis of CDR record, inference is not possible that the present applicant was purchasing the stolen material from the main accused. Thus, nothing can be achieved

by making the present applicant to face the trial. In the result, the application is allowed. Relief is granted to the applicant in terms of prayer clause 'B'. Rule is made absolute in those terms.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/