

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.811 OF 2017

Ashish Bhaskar Bonde	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

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Mrs.Aisha M. Z. Ansari, Advocate for the Applicant.
Ms.P.N. Dabholkasr, APP for the Respondent – State.
Mr.S.S.Wagh, PSI, Gangapur Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 21, 2018.

P.C. :

The applicant has approached this Court by invoking inherent powers under Section 482 of Cr.P.C. to challenge the order dated 12th June, 2017, passed by the learned Judicial Magistrate First Class Court Room No.9, Nashik as well as the order dated 1st July, 2017, passed by the Additional Sessions Judge, Nashik in Criminal Revision Application No.216 of 2017.

2 The petitioner is prosecuted for the offences punishable under Sections 420, 468, 469, 471, 406, 465, 409 and 120-B of the IPC. The offence was registered with Gangapur Police Station on 14th January, 2017, vide C.R.No.-I-14 of 2017.

The prosecution case is that accused no.1 Avinash Kulkarni, the executive of Bajaj Finance Limited prepared bogus documents and sanctioned loan from Bajaj Finance Company and cheated the company to the tune of Rs.62,05,000/-. After registration of first information report, investigation was conducted which reveal the involvement of the present applicant. On completing investigation, charge-sheet was filed on 12th May, 2017.

3 The applicant preferred an application for discharge before the court of learned Judicial Magistrate First Class under Section 239 of Cr.P.C. It was contended in the application that he has not committed any offence and there is no legally admissible evidence against him. He has been falsely implicated in this case. The applicant has not committed any offence and is being implicated on the statements of the co-accused, which evidence is not admissible in law. Learned Magistrate vide order dated 12th June, 2017, rejected the said application. While rejecting the application, the Court had observed that there is a seizure of hard disk containing the forged Pan Card, Aadhar card, licence etc., which documents were used for obtaining loan. It was also observed that forged Pan Card showing photo of the wife of the applicant was also found, which *prima facie*, shows his

involvement. The accused preferred Revision Application before the Sessions Court which was also dismissed by order dated 1st July, 2017. Learned Sessions Judge while passing the said order has observed that *prima facie* case exists against the applicant accused. From the record it appears that computer hard disk is seized and from that hard disk, forged Pan Card, Aadhar Card, Licence were recovered, which were purportedly used for taking loan. It is further observed that the accused were involved and committed the crime in furtherance of common intention and criminal conspiracy and prepared bogus documents of 18 old customers of Bajaj Finance and by opening bogus account in their name transferred the loan amount in their accounts. The amount was used for their own benefit and cheated Bajaj Finance Company to the tune of Rs.62,05,000/-. It is further observed that statement of witnesses were recorded by the investigating agency which shows that the person from Bajaj Finance Company approached them and inquired about obtaining personal loan from the company. The statement of witnesses also indicate that they had received phone calls from Bajaj Finance Company asking them whether they had obtained loan. Dr.Nitin Shinde, one of the witness stated that he had received a phone call from Bajaj Finance Company asking him whether he had obtained loan of

Rs.5,00,000/- from the company which is not repaid by him. Computer hard disk is seized from the applicant which contains bogus and false documents. Thus, from the record, *prima facie*, involvement of the applicant is established and on that ground the application was rejected.

4 Learned advocate for the applicant submitted that there is no evidence to proceed against the applicant. The prosecution is relying on the statement of the co-accused which is not admissible in evidence. There is no recovery from the applicant. It is further submitted that to frame charge, *prima facie* case is required to be made by the prosecution which does not exists against the applicant. The seizure of hard disk is not supported by any evidence. It is submitted that the Courts below has committed an error in rejecting the application for discharge.

5 Learned APP submitted that there is evidence against the applicant to proceed against him. Present applicant and the co-accused are involved in a serious crime of obtaining loan from the Finance Company on the basis of false documents. There is recovery of hard disk from the applicant which contains fabricated documents, which were used for commission of crime.

The loans were obtained on the basis of forged documents in connivance with each other. It is further submitted that the question of admissibility of evidence can be considered at the stage of trial and while deciding the application for discharge, the Court is not required to enter into a deep inquiry. *Prima facie* case is made out against the applicant accused.

6 The prosecution case is that there was a conspiracy between the accused and in pursuant to the conspiracy and in furtherance of common intention, the accused had forged documents and the same were used for obtaining loan from Bajaj Finance Company. The applications preferred before the trial Court and Sessions Court were rejected by assigning reasons. The Courts have observed that *prima facie* case is made out against the applicant. On perusal of the charge-sheet, it is apparent that the prosecution case is that accused have conspired with each other to commit the offence and there is recovery of hard-disk from the applicant, which contains false documents. The statements of witnesses supports the prosecution case that the accounts were opened on the basis of fabricated documents. The order passed by the trial Court also indicate that amongst documents, which were recovered, there was a forged

Pan Card showing the photograph of wife of the applicant which also shows his involvement in the crime. In the circumstances, I find that *prima facie* case is made out against the applicant to proceed against him. There is no reason to set aside the orders passed by the trial Court and the Sessions Court rejecting applications preferred by the applicant. The contentions raised by the applicant can be agitated during the trial. Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Application No.811 of 2017, is rejected;
- (ii) It is clarified that the observations made in this order are only for adjudicating present application and the trial Court should not be influenced by the same at the time of trial;
- (iii) Criminal Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)