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

Criminal Application [ABA] No.55 of 2018

Ashok Sitaram Fulkar and others
vs.
State of Maharashtra, through P.S.O. Ramnagar, Tah. & Distt. Gondia

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri S.V. Purohit, Advocate for the Applicants.
Shri A.V. Palshikar, A.P.P. for the Respondent-State.
Shri R.B. Dhore, Advocate for the Intervenor-Complainant.

CORAM : S.B. SHUKRE, J.
DATE : 9th FEBRUARY, 2018.

Heard.

In the present case, complaint with the police has not been filed by the employer of the applicants. The employer of the applicants is Maharashtra State Electricity Distribution Company Limited (for short 'MSEDCL'). The complaint has been filed by the intervenor Mr. Vijay Gupta. He has no connection, whatsoever, with the MSEDCL. He says that he is an alert citizen and when it was noticed by him that financial irregularities were committed by the applicants, he took up the issue with the higher authorities of the applicants, but as there was no proper response from them, he chose to file a criminal complaint against the applicants. As far as the employer of the applicants is concerned, the learned Counsel for the applicants submits, no decision at the Board level has been taken by the MSEDCL to proceed criminally against the applicants in the present matter and on the contrary, there is an opinion already given by the Chief Engineer, after considering all the enquiry reports that all though there were financial irregularities committed, those irregularities did not have any criminality behind them. The learned A.P.P. for the State also could not show to me that any decision has been taken by the Board of Directors or the competent authority of the MSEDCL to file a criminal complaint against the applicants.

A copy of the reply given by the Chief Engineer of the MSEDCL to Police Station Ramnagar, Gondia, dated 16/01/2018 goes to support the contentions of the learned Counsel for the applicants. It states that the complaint related to paying twice the amounts of bills to the contractors and such double billing and double payments have been regularized by recovery of the excess payment made to different contractors.

On going through the complaint lodged against the applicants, I could not find anything which could be said to be in the nature of creating a reasonable suspicion of commission of those financial irregularities by the applicants with any criminal motive or criminal intention or criminal knowledge. While the record shows that in about six instances, double payments on account of submission of same bill twice has taken place, the material so far collected by the Investigation Officer, nowhere indicates that such double payments were made intentionally and with knowledge about the previous payments. So the possibility of making payments of various bills twice through sheer mistake or negligence cannot be ruled out. The offences have been registered in December, 2017. But, so far, the Investigating Officer could not collect any material creating a reasonable suspicion of commission of offences, which are registered against the applicants.

The offences registered against the applicants by the Police Station Ramnagar, Gondia are the offences punishable under Sections 420, 406, 409, 468, 471 and 120-B read with Section 34 of the Indian Penal Code. The offences punishable under Sections 468 and 471 are serious. However, neither the complainant nor any witness of the complainant could pinpoint any particular documents which have been allegedly forged by any of the applicants. As of now, there is absolutely no material available on record to justify registration of the offences punishable under Section 468 and 471 of the Indian Penal Code. Similarly, the offence of criminal conspiracy punishable under Section 120-B of the Indian Penal Code, though serious, also does not seem to be getting any justification for it's registration in the police record from the material collected so far by the Investigating Officer. As regards the remaining offences, I have already stated that there is no material available on record on the basis of which one can say that the financial irregularities were committed with the knowledge that previously same bills were sanctioned and paid to the different contractors.

I must say, at this stage that, there is a vast difference between commission of an irregularity and commission of an offence. In order that an irregularity travels to the arena of the criminal law, the presence of element of *mens rea* is necessary. *Mens rea* is of course a state of mind, but it can be gathered from the surrounding circumstances, various acts performed by the accused persons and their conduct. Even if the acts and conduct of the accused persons create a reasonable suspicion of their commission of criminal offences, it would be enough for the Investigating Officer to investigate the matter by registering offences against the applicants. As stated earlier, the material available as of now does not create even a reasonable suspicion. The learned A.P.P. for the State also could not show to me any presence of any such material on record. The learned A.P.P. was first assisted by the learned Counsel for the complainant. But, except for stating that commission of financial irregularities by the applicants, they did not point out existence of some material creating a reasonable suspicion against the applicants.

In the result, I am of the view that this is a fit case for grant of anticipatory bail.

The application is allowed and the interim anticipatory bail granted to the applicants on 25/01/2018 is hereby confirmed on the same conditions with the addition of conditions that the applicant shall cooperate with the Investigating Officer in the investigation and shall attend the concerned police station as and when required.

JUDGE

**sdw*