

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

Criminal Application (ABA) No. 132 of 2018 (Vijay v. State of Maharashtra) with
ABA No. 133 of 2018 (Santosh v. State of Maharashtra) and ABA No. 134 of
2018 (Prashant v. State of Maharashtra)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Shyam Dewani, Advocate for applicants in all ABAs
Shri P. S. Tembhare, APP for respondent in all ABAs

Coram : S. B. Shukre, J

Date : 25.4.2018

Heard. Perused reply and additional reply of the prosecution as also case diary.

On 7th March 2018 interim protection was granted to all the three applicants having regard to the submission that the complainant-Company is a Private Limited Act and so its accounts are audited every year and yet, the first information report as against these applicants came to be filed two years after the alleged misappropriation took place. The emphasis is, as to how the auditors did not notice at the relevant time any missing funds alleged to have been misappropriated by these applicants. There are also indications that the audit report would be crucial in considering the genuineness of the allegations made against these applicants.

On 4th April 2018, during the course of hearing, it occurred that there was a chart prepared by the complainant giving specific details of the various acts of misappropriation committed by these applicants and so, it was directed that this chart be placed on record. Now, this chart has been placed on record. It shows in its last column some balance

amounts due from these applicants. Shri Dewani, learned counsel for the applicant has invited my attention to some of the entries taken in this chart and the letters issued by the concerned shop owners to the Company. There is no dispute about receipt of these letters. These letters show that these shop keepers either had placed no order with the Company for purchase of books or had some dispute with the Company regarding the amounts payable by them. They also show that they did not hand over any amount to these applicants. So, some of the entries taken in this chart are admittedly false and only indicate that the financial management of the Company itself is in disarray or disorder. If some of the entries in the chart alleging the amounts misappropriated by these applicants are not genuine, there is no certainty that the remaining entries would also be genuine. Therefore, the complainant-Company ought to have made a detailed verification of its own financial affairs and come out with a specific case fixing accountability of its staff members managing its finance and accounts. It appears, this has not been done by the Company.

To top it all, it is also seen that admittedly, the accounts of the Company were audited every year, but most of the transactions which were connected with the alleged acts of misappropriation had gone unnoticed in the audited reports, provided the allegation is true. If the allegation is not true, there would not be any question of the auditors noticing any of such acts. But, again, the fact remains that it is for the complainant-Company to make an enquiry into its own financial affairs and make a concrete case, if at all any, pointing accusing finger towards a particular set of its employees. That is not a case for the present at least to the extent of these three applicants. There could be a case

specifically made out in a prima facie manner against some of the employees of the Company, but that is altogether a different matter. As far as these applicants are concerned, I am of the view that except for expressing a doubt against these applicants, there is no concrete material placed before me against these applicants. Therefore, I am of the view that the applications deserve to be allowed.

Accordingly, applications are allowed and interim bail granted to the applicants on 7th March 2018 is hereby confirmed on the same conditions with the addition of the condition that the applicants shall attend Police Station every day for a period of one week starting from 27th April 2018 between 11.00 am and 12.00 pm and on such occasions as may be required by the investigating officer.

Disposed of.

JUDGE

joshi