IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 560 OF 2019

Sanjay Kumar Parasmal Jain (Chandalia),
Age : 51 Years, Occu : Business,
R/o. Zafar Gate, Bhikshu Tower,
Aurangabad. ...APPLICANT

VERSUS

1. The State of Maharashtra,
Through Investigating Officer,
Jawaharnagar Police Station,
Aurangabad

2. Poonam Satish Chopda,
Age : 39 Years, Occu : House wife,
R/o. Athrav Plaza, Flat No. C-4,
Garkheda, Alurangabad ..RESPONDENTS

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Advocate for the Applicant : Mr. R. P. Bhumkar
A.P.P for respondent State : D.R. Kale
Advocate for respondent No.2 : Mr. R.M. Jadhav

....

CORAM : T.V. NALAWADE AND’
S.M. GAVHANE,JJ.

DATE : 22-11-2019.

JUDGMENT(PER T.V. NALWADE, J] :-

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

2. The proceeding is filed for relief of quashing of FIR No. 266/2018 registered with Jawahar Nagar Police Station, Aurangabad for the offences punishable under Sections

354,354-A, 509, 506 of the Indian Penal Code. The crime is registered on the basis of report given by respondent No.2. In FIR dated 30.10.2018, she has made allegations that some dispute was going on between present applicant and her family over the amount which was taken by way of hand loan by her family, in the year 2016. It is her contention that the applicant was having evil eye on her and he used to visit the shop of the informant in absence of her husband. It is her contention that about one and half months prior to the date of FIR, at about 9.30 to 10.00 a.m, applicant entered her house in absence of her husband. It is her contention that both the children had gone to the School and then applicant sat in her house by saying that he would wait for the husband of the informant. It is her contention that initially the applicant was sitting in the hall and then he entered into kitchen where she was present and then by holding her hands, he said that he would maintain her and her husband was not in a position to do anything . It is her contention that when she started crying, the applicant said that he had already put it in writing that he was harassed by the informant and her husband and he had taken decision to commit suicide. As he gave threat that he would commit suicide and he would falsely implicate the informant and her husband, she did not disclose the incident to her husband and to others. It is her contention that in the incident dated 15.10.2018, at about 8.00 p.m, the applicant picked up quarrel with her after coming to her shop and he also gave abuses to her. It is her contention that after that incident, she had gone to Pune for some work and due to that, she could not give report about the incident. Thus, in respect of the incident, which had allegedly taken place about one and half months prior to the date of FIR, the report was given by her.

3. Today, a copy of statement given by the husband of the informant on 03.12.2018 came to be produced. This statement shows that there were some transactions between applicant and Satish and the amount around Rs. 49,00,000/- was taken as loan by Satish from the applicant. The contention shows that as the amount was due, some agreement was obtained from Satish by the applicant. It is contention that he had given five cheques of Rs. 10,00,000/- each for re-payment of the amount and when the period of cheque expired, he had given two cheques of Rs. 25,00,000/- each, which were post-dated cheques, to the present applicant. It is contended that though he had given cheques, due to the incident, in which the applicant had given abuses to

his wife, he had given a letter to the Bank and he had stopped the payment. It is contended that due to bouncing of cheques, the applicant has filed cases against him. It is contention that the applicant is falsely making allegations that they had given the ornaments worth Rs. 50,00,000/- to him. He has contended that though he had given the receipt, it was only a description of the ornaments and it was not receipt in real sense. It is contention that from 28.04.2016 to 25.07.2018, he had returned the amount of more than Rs. 50,00,000/- to the applicant, but he is demanding more amount. It is contention that he has the recording of the conversation in which the applicant had given abuses in the shop. It appears that prior to recording of statement on 03.12.2018 some complaint was given by the applicant against him. There is a copy of another communication made with the applicant by Economic Wing Aurangabad city showing that applicant has given complaint against the present informant and her husband that he was deceived by them and when they had agreed to sell the house property, behind his back they have sold the property to third party.

4. The record produced by the applicant in the present matter shows that agreement was made by the husband of the

informant on 25.06.2015, in which he admitted that he had taken the amount of Rs. 49,00,000/- from the present applicant. He had contended that he was giving 78 R portion of the land from the Bhelpuri Tahsil Badnapur by way of security and he would return the amount in installments. There is another document dated 15.06.2015, showing that the husband of the informant had agreed to sell Plot No. 16 from Sundarwadi village, which was part of Gut No. 38. This document shows that amount of Rs. 20,00,000/- was taken as part of consideration and the remaining amount was to be given at the time of the sale deed. This property is said to be sold by Satish and due to that, the applicant has given complaint dated 27.05.2019 to the police.

5. Record is produced like photo copies of various cheques, which were given by Satish to the applicant. In other document, Satish has admitted that he had given such cheques. The record is produced to show that one cheque of the amount of Rs. 25,00,000/- was presented for en-cashment by the present applicant which was dated 29.10.2018, and the cheque bounced on 30.10.2018. Thus, the cheque had bounced on 30.10.2018 and present FIR, came to be given on 30.10.2018 and crime came to be registered at 23.01 hours. It

is clear that only when the the cheque bounced, the FIR came to be given against the present applicant. Thus, the FIR was given after about one and half month of the alleged incident and it was given only when the cheque which was given by the husband of the informant of Rs. 25,00,000/- had bounced. It is not disputed that criminal case for the offence punishable under Section 138 of the Negotiable Instrument Act, is filed due to bouncing of aforesaid cheque.

6. Learned counsel for the applicant submitted that inference is easy on the basis of aforesaid circumstances that only to pressurize the applicant and to see that the informant and her husband are not required to return the amount, false FIR is given. There appears to be substance in this contention. When the cheque had bounced, in ordinary course, further proceeding would have been taken by the present applicant. Further a married woman could not have waited for about one and half months, if the incident of molestation had taken place. In ordinary course, she would have disclosed such incident to her husband. There were many transactions between applicant and husband of the informant and there is record about it. Due to all these circumstances, this Court holds that it will be abuse of process of law, if the applicant is made to face the trial for such offences. In the result, following

order :-

ORDER

1. Application is allowed.
2. Rule is made absolute in terms of prayer clause ‘’B’’.
3. Application is disposed of in above terms.

(S.M. Gavhane, J.) **(T.V. NALAWADE, J.)**

YSK/