IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1650 OF 2018

1. Pratik S/o Pramod Lade,
Age : 23 Years, Occ. Collection Agent
IndusInd Bank
R/o. 5-5-54/191, Galli No.2,
Near Asmita Kiran, Ramanagar,
Krant Chowk, Aurangabad

2. Manish S/o Sudhakar More,
Age : 25 Years Occupation Collection Executive
IndusInd Bank
R/o. Plot No. 53, Shivaji Nagar Road,
Near Jai Ambika School, Renuka Nagar,
Garkheda Parisar, Aurangabad. ..APPLICANTS

VERSUS

1. The State of Maharashtra,
Through CIDCO Police Station,
Aurangabad

2. Mrs. Sapna Nikhil Joshi,
Age : 35 Years, Occupation Advocate,
R/o. Saptshrungi Appartment,
N-7, CIDCO, Aurangabad … RESPONDENTS

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Advocate for the Applicants : Mr. M. D. Narwadkar
A.P.P for respondent-State : Mr. A.S. Shinde
Advocate for respondent No.2 : Mr. S. A. Gaikwad

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CORAM :T.V. NALAWADE AND
V. L. ACHILYA ,JJ.

DATE : 30th JULY, 2019.

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

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

2. The present proceeding is filed for relief of quashing of First Information Report No. 156/2018 registered with CIDCO Police Station, Aurangabad and Regular Criminal Case No. 241 of 2019 filed in the FIR as Charge-Sheet bearing No. 225 of 2018 dated 05.11.2018 which is pending in the Court of learned Judicial Magistrate, First Class, Aurangabad. The case is filed for the offence punishable under section 379 of the Indian Penal Code.

3. The crime was registered on the basis of report given by one lady Advocate who is resident of CIDCO Aurangabad. She had purchased a scooty Activa Moped by taking finance from IndusInd Bank Ltd. The vehicle was hypothecated to the Bank. She has made allegations that on 14.05.2018, her vehicle was stolen when it was parked in front of her house. It was stolen prior to 11.30 a.m. It is her contention that in the compartment of the Scooter (dickey) she had kept a gold ring weighing seven grams and it was also stolen along with the scooter. She gave report on 14.05.2018, itself and crime came to be registered. She had not named the present applicants or the staff of IndusInd Bank Ltd.

4. The learned counsel for the applicants submitted that the informant had become defaulter and the amount of more than Rs.

7,000/- was due from her. Show cause notice was issued to her on 08.05.2018 and she was asked to make the payment of defaulted amount within seven days from the date of notice. It was informed in the notice that if the amount was not cleared, the Bank was likely to take the vehicle in custody. It appears that there is some discrepancy in the date as record of the Bank. It shows that the vehicle was taken over by the Bank prior to 14.05.2018. However, the intimation of this incident was given to the police on the 14.05.2018. There is other record showing that the informant had requested the Bank to give time and in that correspondence time was given and the date of taking possession is mentioned as 12.05.2018. This inconsistency had not been considered for the present purpose. There is copy of an agreement and clauses 15.2 and 15.3 in the said agreement show that the right is given to the Bank to re-possess the vehicle, if there is such default committed by the debtor. Admittedly, there was such default committed by the informant. Present applicants are the employees of the Bank and they had taken the vehicle in possession. The informant had applied to the Bank on 12.05.2018 and in response to that letter the Bank had informed that it was open to the informant to make the payment and take back the custody of the vehicle. Admittedly that was not done. Copy of that correspondence is produced by the informant herself in the present proceeding. If she had applied to the Bank on 12.05.2018, it does not look probable that the vehicle was stolen on 14.05.2018. It can be said that the things are exaggerated by the informant. It is unfortunate that even when she is a practicing advocate she has done such exaggeration. Even the argument was advanced in-person by the informant that "time" was not given by the Bank as mentioned in the letter dated 12.05.2018 and so they needs to face the trial for the offence. This submission is not at all acceptable. It does not look probable that in the compartment(dicky) of the scooter a gold ring was kept by the informant who is an Advocate. It does not seem probable that she had no knowledge that Bank Officers were taking custody of the vehicle which was kept in front of her house. For all these circumstances and in view of the observations made by this Court in ***Criminal Application No. 24322 of 2010 Mohd. Mohsin Mohd. Taqui Vs. The State of Maharashtra and others*** decided on 02.08.2018, this Court holds that the applicants had worked for the Bank and in exercise of right given by the Bank under the agreement the vehicle was re-possesed and no offence can be made out against the applicants In the result, application is allowed. Relief is granted in terms of prayer clauses 'B' and 'B-1'. Rule made absolute in above terms.

[V. L. ACHILYA]
JUDGE

[T.V. NALAWADE]
JUDGE

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