

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION (APPP) NO. 908 OF 2018
IN
CRIMINAL APPLICATION (APL) NO. 108 OF 2018

Amit Vishwamitra Wadhwa ... Applicant

Versus

Roshan Mahesh Makhija and Ors. ... Respondents

Mr. Subhash Jha a/w Mr. Hare Krishna Mishra and Tony Sachdevani i/by Law Global for the applicant.

Mr. Hrishikesh Mundergi a/w Mr. Subir Sarkar for the applicant in Criminal Application No.108 of 2018.

Mr.J.P. Yagnik, APP for the State.

CORAM : B.P. DHARMADHIKARI &
M.S. KARNIK, JJ.
DATE : AUGUST 02, 2019
[IN CHAMBERS]

P.C.:

On 08th July, 2019, we have passed the following order:

“ Heard learned counsel for the applicant.

2. One of the submission is about two months prior to the order of this Court dated 02/02/2018, petitioner had pointed out to police the conspiracy between borrower Umesh Rajpal and the guarantor Roshan Makhija. It is also submitted that within eight days after the Criminal Application No.108 of 2018 was disposed of by this Court, the Investigating Officer has started investigation

against Umesh Rajpal as co-accused.

3. Effort therefore, is to urge that on 02/02/2018 Umesh Rajpal could not have given no objection to the plea of Roshan Makhija for quashing of the proceedings against him.

4. This court is trying to find out the prejudice caused to Shri Amit Wadhwa (present applicant) who also was co-accused and has been later on exonerated under section 169 Cr.P.C. on 15/02/2018.

5. Mr. Jha, learned counsel for the applicant fairly states that the SLP was unsuccessfully filed and there this plea of collusion between co-accused and the fraud practiced upon this Court was not raised.

6. We therefore, keep the issue of prejudice open and permit the applicant to place on record the data in relation to other criminal proceedings, if any pending between the parties so as to enable this Court to understand the same.

7. List on 22/07/2019 at 2.45 pm in chambers."

2. Today we have heard Advocate Jha with applicant, advocate Mudergji for respondent no.1 and learned APP for respondent no.2 with the Investigating Officer. Nobody is present for respondent no. 3. This court has still not issued formal notice in the matter.

3. It is not in dispute that on 10/02/2018, Umesh Rajpal who gave no objection for quashing of the proceedings against the

applicant Roshan Makhija in Criminal Application No. 108 of 2018 was made accused and on 7/5/2019 chargesheet has been filed against Umesh Rajpal.

4. Learned APP informs that filing of the chargesheet could not be considered against Roshan Makhija because of the order dated 2/2/2018.

5. According to learned counsel appearing for Roshan Makhija, the status of Umesh Rajpal as complainant on 2/2/2018 is not in dispute. He also states that the effort to doubt his role as complainant was made before the Hon'ble Apex Court in SLP filed questioning the orders of this Court dated 2/2/2018.

6. We find that in the SLP, the fact that Shri Rajpal has been made co-accused was not pointed out and as such fraud alleged to be played on this Court did not form bone of contention. The report dated 24/1/2018 sent to the office of learned APP by Mr. Manohar Patil, P.I. Crime Branch, Unit No. 4, Ulhasnagar, however, mentions the role of Mr. Rajpal as accused.

7. On 2/2/2018, when this Court passed the order, it has acted

under the impression that Mr. Rajpal was a complainant and he gave no objection for dropping of the proceedings against the applicant before it namely Roshan Makhija. The order dated 2/2/2018 allowing the Criminal Application No. 108 of 2018 has been passed in this backdrop.

8. The subsequent events show that the impression then prevailing may not have been correct. The developments show that the Investigating Officer could not consider filing of chargesheet against Roshan Makhija because of this order dated 2/2/2018. Apart from this, effort of the present applicant is to demonstrate that the matter has got some other angle which has still not been looked into. We have in the order reproduced supra, taken a note of the fact that the present applicant Amit Wadhwa, the co-accused has later on been exonerated under section 169 Cr.P.C. on 15/2/2018. Today, we are informed by learned APP that Mr. Wadhwa is witness in that matter.

9. In this situation, we find that interest of justice can be met with by directing respondent no.2 State to look into the events which have emerged after 24/1/2018 and to proceed further with the investigation/matter as per law, without getting influenced by

the order dated 2/2/2018 passed in Criminal Application No. 108 of 2018.

10. With these directions to respondent no. 2 State, we dispose of the present Criminal Application.

(M.S. KARNIK, J.)

(B.P. DHARMADHIKARI, J.)