

Shambhavi
N. Shivgan

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by Shambhavi N.
Shivgan
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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

ANT. BAIL APPLICATION NO.754 OF 2020

Burzin Daruwalla ... Applicant
Vs
The State of Maharashtra & Anr. ... Respondents
...

Mr. Yogesh Dalvi i/by Mr. Manish M. Rathod for the Applicant.

Mr. Rohit Kurmi for Respondent No.2.

Mrs. Anamika Malhotra, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : DECEMBER 17, 2020.

P.C. :

Heard.

2 Applicant is apprehending arrest in connection with Crime No.309 of 2020 for the offences punishable under Sections 406, 420 of the Indian Penal Code, 1860 and Section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 (In short '**Black Magic**

Act') on a complaint by one Sarika Samanta.

3 It is the complainant's case that the applicant being her close acquaintance, convinced her that he would help and solve her matrimonial and health issues of her husband by performing pooja through one Guruji, Sanjay Chaube. On this pretext, he demanded money from the complainant. Neither rituals were performed nor her problems were solved and thus, complainant got suspicious of applicant's intention and filed report to Ambarnath Police Station against the applicant and Sanjay Chaube for cheating her. FIR discloses the fact that the complainant since 2015 paid Rs.10,90,762/- to the applicant by transferring the amount in his bank account. Besides, she lent Rs.76,38,838/- as friendly loan to the applicant since 2015 to 2019. In consideration of the promise to perform rituals, applicant gave rings to the complainant assuring that on wearing these rings, her problems would be solved. FIR suggests, when the complainant confronted applicant

that despite performing rituals and pooja, her problems were not resolved, he demanded more money and told her that since she did not follow the ritual norms and instructions of Sanjay Chaube, it could not yield desired results. Complainant being not convinced with this, asked the applicant to return money, which he refused and thereupon complaint was filed.

4 Applicant contradicted and refused the allegations but submitted that he repaid Rs.60 Lakhs to the complainant in cash as and when required by her; however, applicant could not, prima-facie, show any document or receipt in support of his contention.

5 Thus, in consideration of the allegations and the facts of the case, applicant was directed to implead complainant as party respondent.

6 Prosecution in support of allegations, produced bank statement of the complainant. It shows, complainant had transferred about Rs.76 Lakhs in the bank account of the applicant since 2015 to 2019. It appears, complainant was desperate to resolve matrimonial issues and issues relating to the health of her husband. Thus, believing applicant and reposing absolute faith in him, she borrowed money from her friends and paid to the applicant. Statement of her friends, who lent friendly loan have been recorded. These statements suggest that complainant had taken friendly loan for performing pooja and rituals through the applicant. Statement of at-least two witnesses corroborates complainant's case. Statement of one Mani Bukka, who claims to have met the applicant, also corroborates allegations of the complainant on the material points.

7 Be that as it may, before I refer to such other evidence brought on record by the prosecution, it may be stated that prosecution till day could not trace whereabouts of Mr. Sanjay Chaube, Guruji, who allegedly performed rituals and the pooja.

8 The contention of the applicant is that complainant confided to him that her husband being alcoholic, she expressed her desire to keep her funds in his safe custody and same would be returned to her in cash as and when required by her and further contended that he returned Rs.60 Lakhs to her. Defence is prima-facie not probable.

9 Admittedly, there is no evidence coming forth on record from the applicant to accept that he repaid Rs.60 Lakhs to the complainant.

10 Prosecution in support of case, has relied on what's app messages exchanged between the complainant and the applicant. These messages suggest that at regular intervals, applicant demanded money from the complainant for solving her family issues, matrimonial issues and issues relating to the health of her husband. Messages suggest that the applicant had promised the complainant that he would perform rituals through one Mr. Sanjay Chaube and on performance of such rituals, her problems would be solved. Messages suggest, applicant's husband had serious health issues relating to the liver. Messages also suggest and indicate that the applicant had given rings having spiritual power to the complainant, suggesting that upon wearing these rings, problems would be solved. One of such messages sent by complainant on 27th January, 2020 reads as under:

" 27/01/20, 12.19 pm - Sarika Samanta (Complainant): U r a fraud person Sonu (applicant). I was thinking u r a well wisher n helping me in solving my family issues by doing pooja. But in name of pooja u fraud me

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n eaten up my money. I realise u r not a friend, u r an enemy. Now will c how u'll not return my money back. As u spoil my name n face. What u think tum khule aam fraud karke ghoomoge. 27/01/2020, 12.24 pm – Sarika Samanta: Aslo I helped u by giving money for ur work. U know that I don't have money n all which I have u by taking loan. But still u have not returned me even my money. Agar Pooja n Bhagwan me believe karte ho toh thoda toh bhagwanse daro. Jo fraud Kiya hai use accept karo. And return my money immediately. Nahi to mere n meri beti ki tumhe hai lagegi “

11 These messages over a period of 3-4 years , therefore, clearly suggest that the applicant had dishonestly induced the complainant to part with huge money on the pretext of performing pooja/rituals to resolve family issues. However, messages clearly suggest that the applicant knew well since inception that the promise made by him to resolve her issues through pooja, was false.

12 Though the applicant contended that he had repaid Rs.60 Lakhs to complainant surprisingly, in the text messages, nowhere applicant had stated that he returned

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money to the complainant in cash. Had the applicant returned the money, he would have certainly said so in such messages when money was demanded by the complainant.

13 Thus, taking into consideration facts of the case, in my view, custodial interrogation of the applicant cannot be denied to the prosecution. Application is, therefore, rejected.

(SANDEEP K. SHINDE, J.)