

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

CRIMINAL APPLICATION (APL) NO.87/2020

Dr. Amol Ranjeet Deshmukh,
Aged 41 years, Occ. Business,
r/o Civil Lines, GPO Square, Nagpur,
Tq. Dist. Nagpur.

.....APPLICANT

...V E R S U S...

1. The State of Maharashtra through
Police Station Officer, P.S. MIDC,
Nagpur, Tq. Dist. Nagpur.
2. The Commissioner of Police, Office of
the Commissioner of Police, District
Nagpur, Maharashtra.
3. VSPM Academy of Higher Education,
through its authorised person
Yuvraj Daulatrao Chalkhor,
aged about 69 years, Occ. Retired,
r/o Asha Hospital, Duttawadi,
Nagpur.

...NON APPLICANTS

Mr. Rahul Bhangde, Advocate for applicant.
Mr. N. S. Rao, A.P.P. for non applicant nos. 1 and 2.
Mr. Adil Mirza, Advocate for non applicant no. 3.

CORAM:- V. M. DESHPANDE AND
ANIL S. KILOR, JJ.

DATE:- DECEMBER 02, 2020

ORAL JUDGMENT (Per: V. M. Deshpande, J.)

1. Rule. Rule is made returnable forthwith. Heard finally
by consent of learned counsel for the parties.

Heard Mr. Bhangde, learned counsel for applicant, Mr.Rao, learned counsel for non applicant nos.1 and 2 and Mr. Mirza, learned counsel for non applicant no.3. The non applicants have filed their replies and the pleadings are complete.

2. By filing the present application under Section 482 of the Code of Criminal Procedure, the applicant is praying to quash and set aside First Information Report bearing FIR No.803/2019, registered with Police Station, MIDC Nagpur for the offence punishable under Section 406 of the Indian Penal Code.

The offence is registered against the applicant in view of the order passed by the learned Judicial Magistrate First Class, Hingna on 07.11.2019 in Misc. Criminal Application No. 161/2019. The proceedings before the learned Magistrate were initiated by the non applicant no.3 under Section 156 (3) of the Cr.P.C. and it was prayed that the Magistrate shall order the police to register the offence punishable under Sections 406, 408 and 378 of the IPC.

3. The learned Magistrate, on 07.11.2019, did not order concerned police station to register the offence punishable under

Section 408 and 378 of the IPC. However, the learned Magistrate directed the Police Station Officer of MIDC Police Station, Nagpur to register an offence under Section 406 of the IPC and to report him back.

4. Accordingly, in pursuant to the aforesaid order, the Police Station Officer, MIDC, Nagpur registered an offence under Section 406 of the IPC against the applicant. As per the FIR, one Yuvraj Daulatrao Chalkhor is looking after the day-to-day affairs of “VSPM Academy of Higher Education”, being the Secretary from 28.05.2018. Mr. Ranjeet Deshmukh is President of the said trust and nine persons are the members in this trust. The applicant, Dr.Amol Ranjeet Deshmukh was holding the post of Secretary from 13.01.2013 to 23.11.2017 and he used to look after entire affairs of trust and he being the Secretary of the trust, one Innova car having registration No. MH-40/AR-9000, registered in favour of the trust, was entrusted to him. The FIR further recites that on 23.11.2017, election took place and in the said election, the applicant was removed from the post of Secretary. However, in spite he being removed from the post of Secretary, he failed to return Innova car to the trust and using the same for his personal

use and, therefore, he committed the offence under Section 406 of the IPC.

5. During the submissions before this Court, the learned counsel for the applicant submitted that change report was filed by the reporting trustee in the office of learned Assistant Charity Commissioner, Nagpur in respect of the alleged change occurred and it was registered as Change Report Inquiry No.2660/2017. The learned counsel for the applicant further submitted that the applicant lodged his objection in the office of the learned Assistant Charity Commissioner, Nagpur on various grounds.

6. Mr. Mirza, learned counsel for non applicant no. 3, admits that after change report was submitted before the trust authority, the applicant has lodged his objection. Both the learned counsel submit before this Court that Change Report No.2660/2017 is still pending for its adjudication in the office of learned Assistant Charity Commissioner, Nagpur. Thus, the very fact that the applicant stands removed from the post of Secretary, which is seriously challenged by the applicant before the trust authority, is yet to be adjudicated upon.

7. Admittedly, the Innova car is owned and registered in the name of the trust and it was entrusted to the applicant, he being the Secretary. In our view, till the question as to whether the applicant is Secretary or not is decided finally by the trust authorities, it is premature on behalf of the complainant to lodge the report against the applicant that he is misusing the vehicle, he not being the Secretary.

8. It would be useful to refer to definition of criminal breach of trust and it is reproduced thus:

“405. Criminal breach of trust.—

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

Admittedly, vehicle was entrusted to applicant because he was holding the post of Secretary. The contention of the other

side that the applicant is dishonestly using the vehicle, in our view, is not tenable at this stage especially when the change report is yet to be adjudicated upon in respect of the change that alleged to have occurred as per non applicant no.3. Further, as on today, admittedly, vehicle in question is in possession of the trust itself.

9. In view of the above discussion, we are of the view that the FIR is required to be quashed and set aside, it being the premature one. Consequently, we pass the following order.

ORDER

- (i) The application is allowed.
- (ii) First Information Report No. 803/2019, registered with Police Station, MIDC, Nagpur for an offence punishable under Section 406 of the Indian Penal Code is hereby quashed and set aside.

Rule is made absolute.

JUDGE

JUDGE

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