

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

LD-VC/CRIMINAL APPLICATION (APL) NO.602/2020

- APPLICANTS:**
1. Rahul s/o Arun Marode,
30, Occ. Agriculturist, R/o Jashi Palsi,
Shegaon, Tq. Shegaon Distt. Buldana.
 2. Siddharth Kadaskar,
aged 25 years, Occ. Driver, R/o Shegaon,
Tq. Shegaon, Distt. Buldana.

...VERSUS...

- RESPONDENTS:**
1. State of Maharashtra, Through
Police Station Officer, Shegaon,
Tq. Shegaon Police Station, Shegaon,
Tq. Shegaon, Distt. Buldana.
 2. Naib Tahsildar, Tahsil Office,
Shegaon, Tq. Shegaon, Distt. Buldana.

Shri S.A. Mohta, Advocate for applicants
Shri M.J. Khan, Addl. PP for respondents

**CORAM : Z.A. HAQ AND
AVINASH G. GHAROTE, JJ.
DATE : 18/08/2020.**

ORAL JUDGMENT (PER : AVINASH G. GHAROTE, J.)

1. Heard Shri S.A. Mohta, learned Advocate for the applicants and Shri M.J. Khan, learned Additional Public Prosecutor for the respondents.

2. **Admit.** Shri M.J. Khan, learned Additional Public Prosecutor waives notice for the respondents. The criminal application is heard finally with the consent of the parties.

3. The present application seeks to quash and set aside the First Information Report (F.I.R.) No.0495/2019, dated 13/11/2019 for the offence punishable under Sections 379, 186 read with 34 of Indian Penal Code registered with Police Station, Shegaon, Tq. Shegaon, District Buldana.

4. It is alleged that on 13/11/2019 at about 15:00 hrs. a tipper truck bearing registration No.MH-28-AB-7097 was carrying two brass of sand worth Rs.6,000/- illegally and was stopped near the flyover. When the driver/applicant no.2 was asked for the royalty pass, he was not having the same and therefore, he was directed to park the tipper truck in the Tahsil office. A panchanama was drawn, which was refused to be signed by the applicants, who left the vehicle on the road and are alleged to have runaway. On on-line verification of the registration of the tipper truck, it was found that the same was registered in the name of Vishnu Khond.

Later on that day, it was found that the applicants had taken away the tipper truck with two brass of sand, as a result of which, the F.I.R. has been registered.

5. During the course of investigation, the applicant no.1 showed the royalty passes No.8489460, dated 9/11/2019 for one brass of sand each in which the number of the vehicle was mentioned as MH-28-AB-7097 and the name of the purchaser is mentioned as Shivraj Construction, Vasali, which upon verification by the Circle Officer, were found to be having the route from Kumbarkhed Tq. Sangrampur to Shivraj Construction, Vasali and the timing mentioned therein was from 2.34 p.m. to 3.34 p.m. dated 9/11/2019 and the owner of the vehicle was mentioned as Vishnu Khond, as per the reply, filed on record by the respondent no.1. It is further submitted in the said reply that the action on the said vehicle was taken on 13/11/2019 at 3.45 p.m. at Shegaon, which is 30 km. away from the said Vasali, due to which it was alleged that the said vehicle was carrying sand illegally.

6. A bare perusal of the transit passes at Annexure-2, at

pages 14 and 15 of the application, would demonstrate that the seized sand stock of 56 brass at Mouza Kumbarkhed and Kauthal Tq. Sangrampur, District Buldana was acquired in auction/acquired by one Amit Sakhkaram Kalkar and the duration of the licence was till 12/11/2019. The two transit passes for transporting one brass of sand each, were issued on 9/11/2019, whereby two brass of sand was permitted to be transported in vehicle No.MH-28-AB-7097 to Shivraj Construction, Vasali. Thus, the transportation of two brass of sand by the above stated vehicle number, from Kumbarkhed to Vasali was clearly permissible under the above said two transit passes at Annexure-2 to the present application, which has not been controverted in the reply filed by the respondent no.1. The basic contention is that, the vehicle No.MH-28-AB-7097 was seized at Shegaon on 13/11/2019, which was 30 km. away from Vasali, the spot on which, according to the transit passes, the sand was to be delivered.

7. Upon a query being made by us, Shri Khan, the learned Additional Public Prosecutor fairly states that Shegaon is on route from Kumbarkhed to Vasali, at a distance of about 30 km. from

Vasali, in light of which, what can at the most be inferred, was that the vehicle carrying the sand was yet to reach its destination, but was definitely on route and not otherwise. A perusal of the transit passes do not depict that any date or time of delivery is mentioned. What is mentioned is the date and time of issuing the transit permit and not otherwise. What is also mentioned, is the period of validity of the licence which was 12/11/2019. However, it is nobody's case that the said vehicle, did not lift up two brass of sand as per the transit permit on 9/11/2019. Once that is the case, merely because there is some delay in transporting the same to the destination as give in the transit permit would clearly not attract the provisions of Section 379 of I.P.C., moreover, when the sand was lifted for transportation and was on its way before the duration of the licence expired on 12/11/2019. That apart, it is also not the case of the respondents, that the sand in the tipper truck, was not licensed to the person whose name is mentioned in the transit passes/permit at Annexure-2. Thus, the requirement of Section 379 of I.P.C. is clearly not satisfied in the matter.

8. That takes us to the provisions of Section 186 of I.P.C. A

bare perusal of the F.I.R. as well as the reply filed by the respondents would indicate that it claims that the applicant, was only directed to park the vehicle in the Tahsil office, however, there is nothing on record to indicate this, which also does not satisfy the requirement of Section 186 of I.P.C.

9. The learned Additional Public Prosecutor has not been able to point out anything else in support of the contention of commission of offence, in light of which, in view of our finding that the ingredients of Section 379 and 186 of I.P.C. have not been satisfied, we deem this a fit and proper case to quash and set aside the First Information Report. Accordingly, First Information Report (F.I.R.) No.0495/2029, dated 13/11/2019, registered with Police Station Shegaon, Tq. Shegaon, District Buldana for the offence punishable under Sections 379, 186 read with 34 of Indian Penal Code is quashed and set aside.

The criminal application is allowed and disposed of accordingly.

JUDGE

JUDGE

Wadkar

Shailendra
Wadkar

Digitally signed by
Shailendra Wadkar
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