

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

CRIMINAL APPLICATION (APL) NO.516/2018

Mr. Govind Wamanrao Rode,
aged __ years, Occupation: Goldsmith,
r/o Iudp Colony, Washim (MH)**APPLICANT**

...VERSUS...

1. The State of Maharashtra through
Police Station Officer, P.S. Washim City.
2. Bhushan Narendra Kulkarni,
Aged 33 years, Occ. Service.
r/o Civil Lines, Washim.**NON APPLICANTS**

Mr. R. R. Vyas, Advocate for applicant.
Mr. M. J. Khan, A.P.P. for non applicant no.1-State.
None for non applicant no.2.

CORAM:- V. M. DESHPANDE AND
ANIL S. KILOR, JJ.
DATE:- DECEMBER 08, 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. Vyas, learned counsel for applicant and
Mr. Khan, learned A.P.P. for non applicant no.1. Non applicant
no.2 chose not to remain present at the time of hearing of this
case though on 22.06.2018 notice of final hearing was given.

The prayer made in this application is to quash and set aside the charge-sheet as well as the criminal case pending on the file of learned Chief Judicial Magistrate, Washim vide Regular Criminal Case No. 285/2017.

2. Non applicant no.2-Branch Manager of Bajaj Finance Limited, Washim (hereinafter referred to as the “BFL” for short) on 11.10.2016 lodged a report against the applicant and three others. The report was disclosing case of cognizable offence. Therefore, Police Station Officer, Washim immediately registered the offence against the accused named in the complaint including the applicant for an offence punishable under Section 420 read with Section 34 of the Indian Penal Code (IPC).

3. The applicant was arrested and ultimately he was released on regular bail, is the statement by the learned counsel for the applicant. After investigation was completed, final report under Section 173 of the Code of Criminal Procedure was presented by the investigating officer in the Court of learned Chief Judicial Magistrate, Washim, who took cognizance in the matter. As it could be seen from the record of this Court that in the said

criminal case, learned Chief Judicial Magistrate was about to frame the charge. However, in view of interim order dated 03.10.2018 passed by this Court, the charge is not framed against the applicant.

4. In short, the prosecution case is; co-accused Prashant Vyawhare, Tukaram Mahale and Suresh Gawande obtained loan by pledging the various gold ornaments with the BFL. It is an admitted position that BFL, Washim is engaged in the business of giving loans to the needy persons who pledge gold ornaments or gold with them.

5. From the FIR, it is clear that Prashant Vyawhare opened five different gold loan accounts with BFL and pledged 166.05 gm. gold and obtained loan of Rs.3,34,100/-. Another accused Tukaram opened eight gold loan accounts and pledged 273.15 gm. gold and took gold loan to the tune of Rs.5,30,100/-. Similarly, co-accused Suresh Gawande opened a gold loan account and kept gold weighing 40.3 gm. and took Rs.80,000/- by way of gold loan.

According to the prosecution, it was revealed to the BFL that gold which was pledged by these three borrowers was not pure one and it was duplicate in nature and these gold articles were prepared by present applicant and he handed over them to the said co-accused.

6. It is the submission of the learned counsel for applicant that the applicant has not taken any hand loan. Therefore, he cannot be roped in the crime registered against the borrower. At the first blush, submission made by the applicant appears to be very attractive one and may tend to accept the same. However, it is an admitted position that the applicant has handed over gold articles to the persons who obtained hand loan from BFL and it was well within knowledge of the applicant that gold ornaments are not of pure quality. What was his intention to give ornaments, which are not gold ornaments by the applicant, who is a goldsmith will be proved only during the course of the trial. In our view, the prosecution must be given an opportunity to find out as to whether right from the beginning the applicant was knowing that those three persons were intending to obtain gold loan on the

basis of the duplicate gold articles which were pretended to be of pure nature and it will be proved only if the prosecution is allowed to adduce the evidence and conduct the trial.

7. In that view of the matter, we are not inclined to scuttle the prosecution and deny them an opportunity to conduct the trial in order to prove the allegations made in the FIR and charge-sheet. Even otherwise, before framing charge, the learned Chief Judicial Magistrate will definitely apply its mind. Therefore, we are of the view that the present application under Section 482 of the Code of Criminal Procedure is devoid of any substance and needs to be rejected.

In the result, the application is dismissed. Rule is discharged.

JUDGE

JUDGE

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