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

CRIMINAL APPLICATION (APL) NO.14 OF 2016

1. Rajendra s/o Manikrao Chavan,
Aged 35 yrs. (Accused No.6)
Occ: Trader, R/o Phadkenagar
Dabali Road, Akola.

2. Sandip s/o Shantikumar Chaurasiya,
Aged 35 yrs. (Accused No.5)
Occ: Trader, R/o Near Manik Talkies,
Malipura, Tilak Road, Akola.

3. Sunil s/o Vasantrao Chopade,
Aged 36 yrs. (Accused No.4)
Occ: Trader, R/o Vijay Vidyut Colony,
Gorakshan Road, Akola. .... **APPLICANTS**

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

The State of Maharashtra, through
P.S.O. Jalgaon-Jamod Police Station,
Jalgaon Jamod, Tq. and District
Buldhana. .... **NON-APPLICANT**
RESPONDENT

Mr. A.V. Bhide, Advocate for Applicants.
Mr. S.S. Doifode, APP for Non-Applicant/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **25th FEBRUARY, 2021.**

ORAL JUDGMENT:

The applicants, who are arraigned as accused 4 to 6 in Regular Criminal Case 169/2005 under Sections 420, 424 read with Section 34 of Indian Penal Code (IPC) and Sections 7 and 8 of the Essential Commodities Act, 1955, Environment (Protection) Act, 1986 and the Seeds Act, 1966 preferred application under Sections 239 read with 240 of the Criminal Procedure Code, 1973 (Code) seeking discharge.

2. The substratum of the application is that there is no *prima facie* material on record as would warrant framing of charge and that the trial would be an unnecessary formality.

3. The learned Magistrate, vide order dated 14.07.2010 refused to discharge the applicants.

4. The applicants preferred Criminal Revision 60/2010. The learned Additional Sessions Judge, Khamgaon, vide judgment dated 28.10.2015 allowed the revision partly. The prosecution was quashed as regards offences under the Essential Commodities Act, 1955, the Seeds Act, 1966 and the Environment Protection Act, 1986. In the result, the only prosecution which the applicants are required to face in terms of the revisional order is under Sections 420 and 424 of the IPC.

5. Mr. Bhide would submit that even if the entire

material placed on record along with the final report submitted under Section 173 (2) of the Code is accepted at face value, there is no material, as would translate into admissible evidence, to presume that the applicants have committed any offence under Sections 420 or 424 of IPC. Mr. Bhide would submit, that in the absence of any admissible material on record, framing of charge and forcing the applicants to undergo the trauma and agony of a trial which is bound to culminate in acquittal, would be an abuse of the process of law.

6. The prosecution case is that the fourteen accused arraigned, including the applicants, were involved in selling fake BT cotton seeds. The crime is registered pursuant to a raid conducted on the business establishment of co-accused Ajay Katyarmal and applicant 1 herein Rajendra Chavan.

7. The prosecution having been quashed qua the offences punishable under section 7 and 8 of Essential Commodities Act, 1955, the Seeds Act and the Environment (Protection) Act, I am not required to dilate on the submission that the BT cotton seeds, as a fact, were not fake nor is it necessary to note the contentions and challenges qua the tenability of the prosecution. The seminal question is, whether

the applicants herein can be prosecuted under Sections 420 and 424 of the IPC.

8. Sections 420 and 424 of the Indian Penal Code read thus:

> ***420. Cheating and dishonestly inducing delivery of property.—****Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*
>
> *Classification of Offence.—The offence under this section is cognizable, non-bailable, compoundable with permission of the Court before which any prosecution of such offence is pending and triable by Magistrate of the first class.*
>
> ***424. Dishonest or fraudulent removal or concealment of property.—****Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*
>
> *Classification of Offence.—The offence under this section is non-cognizable, bailable, compoundable and triable by any Magistrate.*

9. In order to attract the ingredients of the aforesaid provisions, the material on record must *prima facie* indicate that the applicants cheated and dishonestly induced some person deceived to deliver any property. Section 424, speaks of dishonest and fraudulent concealing or removing any property, and the said provision is clearly not attracted.

10. In so far as Section 420 of IPC is concerned, Section 415 defines cheating to mean deceiving any person, fraudulently or dishonestly and inducing such person to deliver any property or to consent that any person shall retain any property or intentionally induce the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

11. In the context of the *sine qua non* ingredients, I called upon the learned APP Mr. Doifode to bring to my notice the material, which according to the prosecution, would warrant a trial.

12. The material, which according to the learned APP

Mr. Doifode is incriminating, and which is sufficient to arouse a strong suspicion, is (i) the BT seeds were seized from the residence of co-accused Ajay Katyarmal and the applicant 1 Rajendra Chavan was present when the raid was conducted. The prosecution case is that Ajay Katyarmal and applicant 1 Rajesh Chavan carry on business in sale of BT seeds together and (ii) the stock register seized indicates purchase of BT seeds by co-accused Ajay Katyarmal from applicants 2 and 3 Sandip Chourasiya and Sunil Chopade.

13. In my considered view, even if the material, which according to the learned APP Mr. Doifode is incriminatory, is accepted at face value, the trial would be an exercise in futility.

14. While it is a settled law that minute sifting of material on record and to evaluate the probative value of the material on record is not expected at the stage of framing charge, it is equally well settled that the Judge is not expected to act as a post office. A limited sifting, to ascertain whether the material on record can translate in admissible evidence, and further, whether such admissible evidence is sufficient to presume that the accused have committed the offence, is not only permissible, is expected. The Court must be loath to

conduct a mini trial. However, while the probative value of the evidence must ordinarily not be evaluated minutely, the broad probabilities must be kept in mind and if the material on record is insufficient to presume, in contradistinction with believe, that the accused have committed the offence, discharge is inevitable.

While a strong suspicion may be sufficient to frame a charge, the suspicion must rest on material on record. The suspicion cannot be in the realm of moral conviction or surmises or conjectures.

15. The observations of the Supreme Court in *Dipakbhai Jagdishchandra Patel vs. State of Gujarat, (2019) 16 SCC 547* in paragraph 23 are relevant, and read thus :

> *"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with*

> *the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."*

16. If the material on record is tested on the anvil of the settled law, the fact that BT seeds were allegedly seized from the joint custody of co-accused Ajay Katyarmal and applicant 1 Rajendra Chavan, is hardly incriminating material qua the charge under Sections 420 or 424 of IPC. Similarly, the fact that the seized stock registers reflect the purchase of BT seeds by co-accused Ajay Katyarmal from applicants 2 and 3 herein is not sufficient to warrant a trial. Even if it is assumed, *arguendo,* that the material referred to *supra* is incriminatory and will translate in admissible evidence, the said material is of no assistance to prove the *sine qua non* ingredients of Sections 420 or 424 of IPC. A false representation or deception which has induced a particular person to part with money is the gravamen of the offence. Neither the seizure nor entries in

the stock register can prove that the applicants deceived a person and the person deceived was induced to part with any property in favour of the applicants.

17. In my considered view, there is no propriety in compelling the applicants to face trial. Such compulsion cannot be to sub-serve an empty or ritualistic formality. This is a fit case for exercise of inherent power under Section 482 of the Code.

18. The Regular Criminal Case 169/2005 is quashed as regards the applicants herein.

19. The application is allowed in the aforestated terms.

JUDGE

NSN