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

CRIMINAL APPLICATION (ABA) NO.30 OF 2021

Manoj s/o Madhusudan Agrawal and anr.
..vs..
State of Maharashtra, thr. Officer-in-charge

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri H.R. Gadhia, Advocate for applicants.
Shri A.M. Kadukar, A.P.P. for non-applicant/State.
Shri A.C. Dharmadhikari, Advocate for intervenor.

CORAM : VINAY JOSHI, J.
DATED : 28/07/2021.

Hearing was conducted through Video Conferencing.

2. Registration of the First Information Report vide Crime No.613 of 2020 with Khamgaon City Police Station, District Buldhana for the offence punishable under Sections 406, 420, 407, 471 read with 34 of the Indian Penal Code, led applicants to apply for grant of pre-arrest bail. The Trial Court refused to grant pre-arrest protection. This Court has granted interim protection vide it's order dated 27.01.2021, which is prevailing till date.

3. It is *inter se* dispute in between the partners of a Firm created for business purpose. The partnership Firm was comprising of three partners out of which informant – Ramesh Gourshette is at one side whilst remaining two partners namely Manoj Agrawal and Nilesh Ingle at other side. The

partnership came into existence by virtue of deed of partnership dated 20.12.2018. The partnership business was carried in the name and style of "Kulswamini Corporation". The business of partnership was of Fly Ash supply and construction work activities. Within short span, there was discord in between partners, which led both sides to lodge rival police reports.

4. On 18.12.2020, informant Ramesh Gourshette lodged a report, on which the Police registered the crime relating to non-cognizable offences. The informant stated that in partnership deed, the shares of each partner and their capital was defined. The applicants were authorized to run day to day business of the Firm. However, applicants started to misuse the authority by selling Fly Ash in clandestine manner. To be specific, applicants used to purchase Fly Ash by paying amount from business account, however by sale of Fly Ash they utilized money for their own benefit. It is alleged that by way of selling of Fly Ash in the market, the applicants have misappropriated total amount of Rs.1,07,20,000/-. The applicants have prepared forged letter heads of the Firm and used the same. Further more, it is alleged that applicants have prepared two forged agreements dated 24.12.2018 with ulterior motive. On the strength of forged documents, the informant has been falsely involved in

the Civil Suit, hence, report has been lodged.

5. Learned Counsel appearing for applicants urged that the dispute is *inter-se* between the partners purely of civil nature. By placing reliance on the decision of Hon'ble Supreme Court in the case of ***Velji Raghavji Patel vs. State of Maharashtra 1965 Mh.L.J 487***, learned Counsel for the applicant submitted that each partner has dominion over Firm's property. In absence of specific agreement, a partner receiving the Firm's money, cannot be said to be misappropriation and held criminally liable in breach of trust.

6. It is argued that applicants have accounted for the entire transactions. It is submitted that, the informant himself acted against the interest of Firm, he had stolen all business documents, account books, files and misappropriated parnership assets. The applicant – Nilesh Ingle had already lodged a report dated 03.03.2020 against the informant on the basis of which crime has been registered. According to applicants, to give counter blast to said registration of crime, this false report has been lodged. Inasmuch as, it is contended that in order to avoid the liability in civil suit filed by the Creditor Dipen Sarode, false report has been lodged to create defence.

7. The non-applicant/State resisted bail by filing

reply-affidavit. The contents of First Information Report are reiterated in brief. Besides that, it is stated that applicants remained non-cooperative during interim protection. The Investigating Officer requires custodial interrogation of the applicants to seized the tainted two agreements dated 24.12.2018. In order to facilitate the investigation, bail is prayed to be rejected. Likewise, learned Counsel appearing for the informant also put stiff resistance to this application. He would submit that the applicants have cheated the Firm for huge amount. They have misused their position and created false documents. So also, by conspiring with the Creditor, caused to file false recovery suit against the informant. He would submit that, on the basis of photo copies of forged agreements, the informant got hand writing Expert's opinion stating that the documents does not bear the informant's signature. In order to seize forged document, their custodial interrogation is necessary.

8. Perusal of admitted document i.e. partnership deed dated 20.10.2018 reveals that all the partners are authorized to participate in day to day business activities of the Firm. It was not point out from the initial partnership documents that applicants were only authorized to run the business as alleged. It is not in dispute that the partnership Firm carried the business of sell and purchase of Fly Ash. By virtue of partnership deed itself, applicants along with the

informant were authorized to utilize partnership funds to carry business. *Prima facie,* there is no reason to hold that there was a specific entrustment of the amount, because in the capacity of the partner of the Firm, they had authority to deal with partnership property. In case of Velji Patel (*Supra*), it has been observed that a partner using Firm's asset for his own purpose may be accountable civilly, but will not be liable to be prosecuted for misappropriation. In view of that, in absence of specific agreement or authorization, it is *prima facie* difficult to hold that applicants who are authorized to deal with partnership's asset, have misappropriated the funds. Moreover, learned Counsel for applicants would submit that they have accounted for sell of Fly Ash and the remaining Fly Ash is still lying with the Firm.

9. The dispute appears to be about disputed agreements dated 24.12.2018. The photo copies of both documents are tendered on record. According to the informant, those documents are forged one, as they does not bear his signature. The first agreement appears to be *inter se* in between three partners, which is notarized documents. It bears signatures of all three partners annexed with photo copies of Aadhar Card of each one including the informant. Whether it bears forged signature is a matter of trial. The next agreement appears to be executed by all three partners in favour of one Creditor namely Dipen

Sarode. According to the informant, he has obtained opinion of hand writing Expert in support of his contention. It appears that two inconsistent opinion from different hand writing Experts are forthcoming. The genuineness of vital documents allegedly executed with Creditor is the subject matter of the Civil Suit. The applicants on affidavit stated that they does not possessed both the documents.

10. *Prima facie*, it appears that there is *inter se* dispute in between the partners about running of partnership business. The dispute appears to be having civil flavor, unless special circumstances about fraud and forgery are made out. Already from last six months, the applicants are under protection of this Court. Though the State contended that applicants are non-cooperative, however, no supporting material has been produced. It is aptly brought to the notice that interim protection was granted by this Court vide it's order dated 27.01.2021 whilst in reply-affidavit dated 01.02.2021, within just three days, it has been contended by the State that they have tried to contact to applicant, but they are not cooperating.

11. Learned A.P.P. conceded the position that Investigating Officer has not issued notice to the applicants calling them to the Police Station. This Court has not directed applicants specifically to attend the Police Station on particular dates. In the

circumstance, in absence of material, it cannot be said that applicants remained non-cooperative. The matter largely depends upon the accounts and documentary evidence. The genuineness of two documents closely connect with the pending Civil Suit.

12. Having regard to the nature of allegations, *inter-se* dispute between the partners, it is a fit case to use judicial discretion. The process of investigation can go on, by directing applicants to attend the concerned Police Station on specific dates. Needless to say that, if applicants remained non-cooperative, then it is open for the State to move this Court for cancellation of bail.

13. Having regard to all above circumstances, the applicants have made out a case for grant of pre-arrest protection, hence the following order :

(a) The applicant stands allowed.

(b) Ad-interim order dated 27.01.2021 is hereby made absolute on same terms and conditions.

(c) The applicants are directed to attend concerned Police Station on every Sunday in between 11.00 am to 2.00 pm till filing of charge-sheet.

JUDGE

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