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

Criminal Application (ABA) No. 249 of 2021
(Prashant S/o Madhusudan Giri **..vs..** State of Maharashtra through P.S.O. Kotwali, Nagpur (City) Dist. Nagpur)
with
Criminal Application (ABA) No. 276 of 2021
(Sunil S/o Sudhakar Parabhane **..vs..** State of Maharashtra through P.S.O. Kotwali, Nagpur (City) Dist. Nagpur)

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

Mr. S. W. Sambre, Advocate for the applicants
Mrs. K. R. Deshpande, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.
DATED : 03-05-2021

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The applicants are apprehending arrest in Crime 243/2020 registered with Kotwali Police Station, Nagpur under Sections 406 and 420 of the Indian Penal Code on the basis of complaint lodged by Mr. Liladhar Giri.

3. The complainant initially lodged complaint dated 23-1-2018. Learned Additional Public Prosecutor Mrs. Deshpande fairly does not dispute that the Kotwali Police did make enquiries and chose not to register an

offence. Perusal of the investigation papers reveals that the complainant attended the Home Minister's Complaint Redressal Camp and reiterated the allegations. Presumably, on the basis of the instructions issued at the Camp, the Deputy Commissioner of Police (D.C.P.), Zone-3, Nagpur City revisited the complaint and directed Kotwali Police Station to register an offence.

4. The gist of the complaint is that the complainant is a businessman and is the proprietor of Narayan Book Agency. Applicant Prashant Giri, who is a relative of the complainant, was the marketing executive of Luxor Writing Instrument Pvt. Ltd. Co. and persuaded the complainant to be the distributor. It is alleged that the complainant took the assistance of applicant Prashant Giri to make payments to the said company and to that end, handed over blank cheque book. It is alleged that in the month of November, 2015, the company asked the complainant to clear outstanding of ₹ 20,00,000/-. The demand shocked the complainant since according to him, there were no over-dues. The complaint alleged that enquiries reveal that the applicant Prashant Giri and

applicant Sunil Parabhane who was also working with Luxor Writing Instrument Pvt. Ltd. Co. as Supervisor misused the blank cheuqes and transferred various amount in various accounts.

5. The learned counsel for the applicants would submit that applicant Prashant Giri has transferred amount of approximately of ₹ 25,00,000/- in the account of the complainant between 30-1-2015 to 6-9-2015 and that as a fact it is the complainant who owes Prashant Giri certain amount and the complaint is clearly to pressurize Prashant Giri not to insist on the amount receivable. In response to a pinpointed query, learned Additional Public Prosecutor Mrs. Deshpande fairly did not dispute that the amount of ₹ 25,00,000/- was indeed transferred to the account of the complainant. However, on instructions from the Investigating Officer, she submits that the amount transferred has no nexus with the misappropriation alleged by the complainant. Whether there were civil/commercial transactions and the existence of liability would be with the realm of the Civil Court.

6. Insofar as entitlement to pre-arrest protection is concerned, the alleged misappropriation admittedly took place prior to November, 2015. The complaint is lodged on 23-1-2018. The complaint was enquired into and presumably, the Kotwali Police did not find that the complaint disclosed commission of cognizable offence. It is only when the complainant made a grievance with the Home Minister that on the instructions of D.C.P., Zone-3, the offence is registered on 22-10-2020. The inordinate delay and inaction on the part of the complainant is itself an extremely relevant consideration, particularly, since according to the applicants, the complaint is a counterblast. Mr. Sachin Sambre points out that as a fact, the complainant issued a cheque in favour of applicant Prashant Giri which was dishonoured and proceedings under Section 138 of the Negotiable Instruments Act are instituted *albeit* after registration of the offence.

7. It is not the case of the prosecution that there are criminal antecedents or that the applicants are likely to

pose flight risk. Considering that the dispute has civil color and overtone, in my considered view, the applicants have made out a case for grant of pre-arrest protection.

8. The pre-arrest protection granted to applicant Prashant Giri vide order dated 12-4-2021 and to applicant Sunil Parabhane vide order dated 30-4-2021 is made absolute with the only modification that the applicants shall attend the concerned police station, till the filing of the charge-sheet, as and when required by the Investigating Officer.

9. The applications are disposed of.

JUDGE

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