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

CRIMINAL APPLICATION (APL) NO. 380/2020

APPLICANT : Shrikantha Gopal Mandyam, aged about 61 years, Occ. Retired, resident of Flat No. S-2, Laxmikrupa Apartment, Plot no. T-7, Laxminagar, Nagpur

...VERSUS...

NON-APPLICANTS:
1. State of Maharashtra, through P.S.O. P.S.Tashil Police Station, Nagpur.
2. Manish Amarchand Mehta, aged about 50 years, Occ. Business, R/o. Bhaji Mandi, Itwari, Nagpur,

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Shri Masood Shareef, Advocate for applicant
Shri A.R.Chutke, APP for Non-applicant No.1 - State
Shri A.N.Ansari, Advocate for Non-applicant No.2

CORAM : MANISH PITALE, J.
DATE : 26/07/2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2] Heard learned counsel for the applicant.

Admit.

Learned APP appearing on behalf of the non-applicant No.1 - State and Shri Ansari, learned counsel appearing on behalf of non-applicant No. 2 waive notice.

3] By this application, the applicant (original accused) has challenged the order dated 30.11.2013, passed by the Judicial Magistrate, First Class and the order dated 03.03.2020, passed by the Court of District and Sessions Judge-5 and Additional Sessions Judge, Nagpur, whereby the prayer made on behalf of the applicant for discharge was rejected.

4] The applicant is a retired Branch Manager of a Bank at Nagpur. The grievance of non-applicant No.2 (original complainant) is that the applicant by issuing a Discharge Certificate to the non-applicant No.2, discharging him from liability as a guarantor in respect of a loan transaction and then allegedly suppressing the same, has committed offences under Sections 406 and 420 of the Indian Penal Code (I.P.C.)

5] The non-applicant No. 2 filed a complaint dated 12.01.2011 before the Court of Judicial Magistrate, First Class, Nagpur. He specifically claimed that when the bank in question, wherein the applicant was working as a Manager, enhanced the credit facility of one M/s. Parshwa Engineering Pvt. Ltd., the non-applicant No. 2, who was a guarantor for the said company, applied for discharge from the guarantee in the context of the fresh transaction pertaining to enhancement of credit facility. The non-applicant No.2 then claimed that on 23.01.1999, the applicant issued the Discharge Certificate to him.

6] The aforesaid bank had initiated recovery proceeding against the aforesaid M/s. Parshwa Engineering Pvt. Ltd. and its responsible officers by filing Original Application No. 497/2001 before the Debts Recovery Tribunal (DRT) at Nagpur. The non-applicant No.2 was arrayed as respondent No.7 in the said proceeding. It is relevant that the said proceeding was initiated by the Bank and that the applicant before this Court was not a party to the said proceeding. In the said Original Application, non-applicant No.2 had moved an application for being deleted from the array of respondents by relying upon the aforesaid Discharge Certificate. Only photocopies of the said Discharge Certificate and other such documents were produced by non-applicant No. 2. The DRT considered the said material and rejected the application filed by non-applicant No.2.

7] In the Original Application, the DRT issued a recovery certificate by accepting the contention of the Bank. The review application moved against such an order was also rejected by the DRT. Thereafter, the Bank and the said M/s. Parshwa Engineering Pvt. Ltd. and its responsible officers entered into a settlement. The non-applicant No. 2 was admittedly not a party to the same. Under the said settlement, the said M/s. Parshwa Engineering Pvt. Ltd. and the Officers of the said company paid the agreed amount to the Bank. It is an admitted position that the non-applicant No. 2 was not required to pay any amount to the Bank in pursuance of the aforesaid settlement.

8] It is in this backdrop that the aforesaid complaint dated 12.01.2011, was filed by the non-applicant No. 2 under Section 156(3) of the Code of Criminal Procedure (Cr.P.C.) before the Magistrate. On the basis of the allegations made in the said complaint, on a direction issued by the Magistrate, FIR dated 11.02.2011 was registered against the applicant for offences under

Sections 204, 406 and 420 of the IPC. The investigation was completed and on 18.01.2013 charge-sheet was filed for the aforesaid offences against the applicant before this Court.

9] At this stage, the applicant moved an application for discharge before the Magistrate, contending that none of the ingredients pertaining to the said offences were found on the basis of the charge-sheet and the material filed therewith. It was submitted that, therefore, the applicant deserved to be discharged.

10] On 20.11.2013 the Magistrate rejected the said application on the basis of following reasoning.

> *"In the present case on perusal of whole charge-sheet, it appears that charge-sheet is filed against accused in the individual capacity. The act of issuing discharge certificate in favour of complainant is against the act of submission of bank before DRT about non-discharging complainant from liability as a guarantor. Discharge certificate is came to be seized during investigation and it is sent to handwriting expert, whose report is yet awaiting. Therefore, after considering all documents and allegations of possession, I am of opinion that there is material to proceed in this matter. Though the initial dispute between the parties was of civil in nature, but by issuing certificate regarding discharge of guarantor (complainant) and then denied the same by the bank also attract ingredient of criminal offence done by concerned Bank Manager in the individual capacity.*

Therefore, whatever the allegation made by prosecution against accused are not appears to be groundless. Hence, I proceed to pass following order.

Order

Application (Exh.6) is rejected."

11] Aggrieved by the same, the applicant filed revision application before the Sessions Court. By judgment and order dated 03.03.2020, the Court of Additional Sessions Judge dismissed the revision application, confirming the order of the Magistrate, refusing to discharge the applicant. The aforesaid Court found that the act of issuing Discharge Certificate by the applicant and it being denied by the Bank clearly made out the case against the applicant to face trial concerning the aforesaid offences.

12] Aggrieved by the said orders passed by the Magistrate and the Sessions Court, the applicant approached this Court by filing the present application, in which notice was issued on 14.12.2020. The respondents have appeared before this Court and the application is taken up for final disposal.

13] Mr. Masood Sharif, learned counsel for the applicant invited attention of this Court to the proceedings initiated by the

Bank before the DRT, order passed therein, as also the application filed on behalf of non-applicant No.2, under Section 156(3) of Cr.P.C. The learned counsel for the applicant submitted that even if the allegations levelled against the applicant were to be considered in the backdrop of the charge-sheet and the material brought on record, none of the ingredients of offences under Sections 204, 406 and 420 of the I.P.C. could be made out at this stage of the proceedings. On this basis, it was submitted that the applicant cannot be forced to face the rigor of trial when the basic ingredients of the alleged offences were not made out. The learned counsel placed reliance on the judgment of the Supreme Court in case of - (1) *Priyanka Srivastava and another vrs. State of Uttar Pradesh and others,* reported in **(2015) 6 SCC 287;** (2) *Kotak Mahindra Bank Ltd. vrs. Nobiletto Finlease and Investment Pvt. Ltd* reported in **2005 (3) Mh.L.J. 512** and (3) *K. Virupaksha and another vrs. State of Karnataka and another* reported in **(2020) 4 SCC 440**.

14] On the other hand, Mr. Ansari, learned counsel appearing for non-applicant No. 2 submitted that while considering the application for discharge, the Court is not supposed to go into the veracity of the material placed on record or to examine the sufficiency or otherwise thereof. It is submitted that the charge-sheet and the material brought on record sufficiently demonstrated existence of the ingredients of the aforesaid offences against the applicant. It was submitted that the allegation against the applicant was that despite issuance of the aforesaid Discharge Certificate to non-applicant No.2, the bank of which the applicant was the Branch Manager, had all along denied issuance of such certificate in the proceedings before DRT. It was further submitted that although the Discharge Certificate issued to non-applicant No. 2, was in the custody of the investigating authority, office copy thereof was allegedly destroyed by the applicant and the Bank, thereby indicating that the ingredients of the said offences were made out against the applicant. Reliance was placed on judgments of the Hon'ble Supreme Court in case of - (1) *Pallavi vrs. State of U.T Chandigarh and others,* reported in **(2019) 18 SCC 206** and (2) *Indu Jain vrs. State of M.P. and others,* reported in **(2008) 15 SCC 341.**

15] Heard learned counsel for the parties and perused the record. There can be no dispute with the position of law that when an application for discharge is considered by the Court, a mini trial cannot be undertaken and the Court is supposed to examine as to whether the material brought on record along with the charge-sheet prima facie makes out ingredients of the offences alleged. If the Court find upon an analysis of the material on record that the essential ingredients of the alleged offences are not made out, the accused is entitled to the benefit of discharge and he cannot be forced to face the rigor and ignominy of a criminal trial.

16] In the present case, the allegation against the applicant appears to be that he had issued a Certificate of Discharge, dated 23.01.1999, in favour of non-applicant No.2, thereby stating that the said non-applicant stood discharged from all liability pertaining to credit facilities given to the aforesaid M/s. Parshwa Engineering Pvt. Ltd.. It is alleged that despite issuance of such Discharge Certificate, when the Bank initiated recovery proceedings against M/s. Parshwa Engineering Pvt. Ltd. and arrayed non-applicant No. 2 as a respondent in the proceedings before DRT, the bank denied issuance of such Discharge Certificate. It is alleged that the said act on the part of the applicant being his individual act and the denial on the part of the Bank about issuance of such Discharge Certificate certainly demonstrated ingredients of the aforesaid offences under

Sections 204, 406 and 420 of the I.P.C. It was claimed that the original Discharge Certificate was already in the custody of the investigating authority, in pursuance of the investigation undertaken after FIR dated 11.02.2011, was registered. According to the non-applicant No.2, existence of such material clearly indicated that the applicant could be tried for the aforesaid offences.

17] A perusal of the proceedings before the DRT show that the applicant was admittedly not a party to the Original Application filed by the Bank to recover outstanding amount from M/s. Parshwa Engineering Pvt. Ltd. The non-applicant No. 2 was indeed arrayed as respondent No.7. He filed an application for being deleted from the array of respondents, by relying upon the said Discharge Certificate. It is significant that the order passed by the DRT rejecting application of non-applicant No.2 specifically records that only photocopy of the documents including the said Discharge Certificate were placed on record by non-applicant No.2. The original Discharge Certificate was not produced before the DRT. The Bank denied the issuance of such Discharge Certificate and consequently the application for deletion filed on behalf of non-applicant no. 2 stood rejected.

18] It is an admitted position that eventually the said M/s. Parshwa Engineering Pvt. Ltd. and its responsible officers entered into a settlement with the Bank, under which they paid certain amount to the Bank and there was no liability imposed upon the non-applicant No.2 in respect of the dues of the said M/s. Parshwa Engineering Pvt. Ltd.. In other words, non-applicant No. 2 did not have to part with any amount on the basis of denial of the Discharge Certificate by the said Bank.

19] It is in this backdrop that the non-applicant No. 2 filed complaint dated 12.01.2011 before the Magistrate under Section 156(3) of Cr.P.C. alleging that the applicant has committed offences under Sections 406 and 420 of the I.P.C. The litigation before the DRT initiated by the Bank and its proceedings were referred to in detail in the said complaint while making allegations against the applicant.

20] The charge-sheet, filed in pursuance of the investigation undertaken after registration of FIR, shows that the original Discharge Certificate was taken into custody by the investigating authority on 16.03.2012 from non-applicant No.2. The said document and other such material was relied upon while stating in the charge-sheet that the applicant deserves to be charged for the offences under Sections 204, 406 and 420 of the IPC.

21] The question that arises for consideration is, as to whether the material that has come on record in pursuance of the investigation and filed along with charge-sheet is enough to prima facie show the ingredients of the said offences, for the applicant to face trial.

22] In order to examine whether the ingredients of the said offences are made out or not, it would be necessary to refer to the relevant provisions of the I.P.C. The said provisions read as follows -

> *"Sec. 204 -* ***Destruction of document or electronic record to prevent its production as evidence -*** *Whoever secrets or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term*

> *which may extend to two years, or with fine, or with both."*
>
> *Sec.405 - **Criminal breach of trust** - Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or coverts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."*
>
> *"Sec.406 - **Punishment for criminal breach of trust** - Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*
>
> *"Sec.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."*

23] A perusal of the above quoted portion would show that in so far as offence under Section 420 of the IPC is concerned, the essential ingredients would be that the accused dishonestly induces a person to deliver any property or to make alter or destroy the whole or any part of valuable security, such a person shall be liable for punishment. Section 415 of IPC defines "cheating" and it is stated therein that when an accused person deceives any person and fraudulently and dishonestly induces him to deliver any property or to consent that any person shall retain any property, such an accused person is said to have cheated the other.

24] Hence, it is necessary for invoking Section 420 r/w Section 415 of IPC, that the aggrieved person is deceived to deliver any property to the other person. In the present case, it is not even the allegation of non-applicant No.2 against the applicant that by the action of the applicant, the non-applicant No. 2 was deceived into delivering any property to the applicant. It would have been a different matter altogether if the allegation was that due to action of the applicant, non-applicant no. 2 was required to part with certain amount or property to be paid to the aforesaid Bank. In the present case, admittedly the said M/s. Parshwa Engineering Pvt. Ltd. and the responsible officers of the company paid certain amount to the Bank and the matter stood settled. It is not as if the applicant has issued the discharge certificate to the non-applicant No. 2, in order to dishonestly induce him to part with any amount or property to be paid either to the applicant or to the Bank. Therefore, the essential ingredients of the said offence under Section 420 of the IPC are not made out.

25] Insofar as Section 406 r/w Section 405 of the IPC pertaining to criminal breach of trust are concerned, the essential ingredients of the offence are that when the accused person is entrusted with the property and he dishonestly misappropriates or converts the same to his own use, he is said to have committed the offence of criminal breach of trust. In the present case, even if the allegations made against the applicant and the material that has come on record along with the charge-sheet are taken into consideration, there is no allegation of entrustment of the property to the applicant, muchless any dishonest misappropriation of the same or conversion of the same to his own use by the applicant. The material on record is completely bereft of any such allegations. Therefore, the ingredients of the said offences are also not made out on the face of record.

26] Insofar as offence under Section 204 of the IPC is concerned, persual of the said provision would show that the ingredients of the said offence would arise when there is a destruction of a document to prevent its production in evidence. In the present case, the document in question i.e. the Discharge Certificate dated 23.01.1999 was produced by non-applicant No.2 himself during the course of investigation. This very document is the sheet anchor of the allegation made by non-applicant No. 2 against the applicant. As regards, the contention raised by the learned counsel on behalf of non-applicant No.2 that the destruction was of the office copy of the said Discharge Certificate by the Bank and the applicant, suffice it to say that such an allegation is wholly misplaced in the facts and circumstances of the case present case. The record shows that on 16.03.2012 the investigating authority itself took into custody the original discharge certificate dated 23.01.1999 from non-applicant No. 2 himself. Therefore, ingredients of the said offence are also not made out against the applicant.

27] Applying the position of law laid down by the Hon'ble Supreme Court in various judgments including aforesaid judgments on which learned counsel for the applicant and non-applicant No. 2 have placed reliance, it becomes clear that there is absence of material, in the facts and circumstances of the present case, to allow the proceedings to go to trial against the applicant. For a person to face criminal trial is certainly an ordeal, which cannot be permitted when the material on record filed along with the charge-sheet does not show essential ingredients of the alleged offences. It is in such situations that the Court is required to reach a conclusion that even suspicion is not raised against the accused on the basis of material on record. Once such a conclusion is reached, the Court must exercise jurisdiction to discharge the accused, preventing the matter to go to trial.

28] On the basis of the material on record, this Court is of the opinion that in the present case, the application for discharge ought to have been allowed. But the Court of Magistrate as well the Sessions Court failed to appreciate the material on record in the correct perspective while dismissing the application for discharge.

29] In view of the above, the application is allowed. The impugned order dated 30.11.2013, passed by the Magistrate and the order dated 03.03.2020, passed by the Sessions Court, are quashed and set aside. The application for discharge filed on behalf of the applicant stands allowed.

30] Rule is made absolute in above terms. No order as to costs.

<u>JUDGE</u>

Rvjalit