

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

CRIMINAL APPLICATION (APL) NO. 1077 OF 2021

(Mohan Eknath Dani ..vs.. Chandrakant Keshavrao Ghumre)

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

Court's or Judge's orders

Mr. Amol Mardikar, Counsel for the applicant.

CORAM : ROHIT B. DEO, J.

DATED : 12-10-2021

Heard learned Counsel Mr. Amol Mardikar for the applicant.

2. The applicant, who is arraigned as accused in Complaint Case 2332/2010, which is pending in the Court of Judicial Magistrate First Class, Nagpur, is invoking inherent power, with twin prayers.

3. The first prayer is to quash and set aside the complaint and the other prayer is to quash and set aside the order dated 04-10-2017 whereby the learned Magistrate refused to recall the complainant in exercise of power under Section 311 of the Criminal Procedure Code (Code).

4. The non-applicant instituted Complaint Case 2332/2010 seeking prosecution of the accused for offence punishable under Section 420 of the Indian Penal Code. In essence, the allegation is that the accused is a

builder whom the complainant permitted to develop FSI of 2950 square feet and, the accused-builder dishonestly secured sanction from the planning authority for FSI of 3506.26 square feet and further carried out illegal and excess construction of 600 square feet.

5. As far back as in 2011, the accused preferred an application styled as “application for dismissal of complaint”. The said application was rejected and the applicant approached this Court in Criminal Application (APL) 134/2014. The said application came to be disposed of vide order dated 04-2-2015, which reads thus:

“Heard.

Leave to withdraw prayer Clause-(i) with liberty to file appropriate proceedings before the appropriate forum is granted.

As regards prayer Clauses (ii) and (iii), permission to withdraw the application is also granted with liberty to file fresh application stating detailed grounds on which the complaint may be recalled. Upon filing of such an application, the trial Court shall deal with the same, in accordance with law and for deciding the same, earlier order passed in this matter by the trial Court as well as of the revisional Court shall not come in the way.

The application is disposed of accordingly.”

6. It would be necessary to note the prayer clauses in Criminal Application (APL) 134/2014 which reads thus.

“(i) Exercise the inherent jurisdiction and call for the records in Criminal Complaint Case No.2332/2010 pending before the Additional Chief Judicial Magistrate, Nagpur and be pleased to quash the Criminal Complaint Case No.2332/2010 (Annexure-D) filed by non-applicant.

(ii) In the alternative this Hon’ble Court be pleased to quash and set aside of the judgment and order passed by the Adhoc District Judge-2 and Additional Sessions Judge, Nagpur in Criminal Revision No.289/2013 (Annexure-A) decided on 06-2-2014 the order passed by the 2nd Additional Chief Judicial Magistrate, Nagpur below Exhibit 30 in Complaint Case No. 2332/2010 decided on 21-8-2013 (Annexure-B).

(iii) This Hon’ble Court be pleased to grant ad-interim stay of the further proceedings in Complaint Case No. 2332/2010 pending before the Chief Judicial Magistrate, Nagpur during the pendency of the present proceeding.”

7. It is not in dispute that despite the liberty to file appropriate proceedings before the appropriate forum, the applicant sat over the matter. The applicant did not take any step to file an appropriate proceedings before the appropriate forum. The remedy of revision was clearly available. The learned Sessions Judge was not approached.

8. In view of the earlier order, I am not inclined to consider the prayer for quashment of the complaint. The recording of evidence before framing charge has commenced.

9. In so far as the refusal of the trial Court to recall the complainant in exercise of power under Section 311 of the Code, in paragraph 15 of the order impugned, the learned Judge has rightly observed that after framing of the charge, the complainant can be thoroughly cross-examined. In view of the said observation, the learned Counsel Mr. Amol Mardikar submits that the challenge to the order impugned is not pressed.

10. While I am disposing of the application as withdrawn, it is clarified that the adverse observations in the order impugned shall not prejudice the accused nor shall be held against the accused should the accused decide to move any other application or take any other step in the proceedings.

11. Subject to the observations above, the application is disposed of as withdrawn.

JUDGE

adgokar