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

CRIMINAL APPLICATION (APL) NO.1061 OF 2019

1) Pradip Pralhad Kulkarni,
Aged about 35 years,
Occ: Service.

2) Milind Kailashshankar Khandelwal,
Aged about 40 years,
Occ: Service.

3) Pravin Krushnarao Naidu,
Aged about 50 years,
Occ: Service.

4) Rahul Dilip Deshpande,
Aged about 37 years,
Occ: Service,

All R/o Vaishnav Complex,
Opp: M.S.E.B. Powerhouse, Gauraskshan
Road, Akola, Dist. Akola. .... **APPLICANTS**

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

1) State of Maharashtra, through
Police Station Officer,
Police Station Khadan, Akola,
Tah. & Dist. Akola.

2) Mr. Assadullah Khan
Aged about 30 years,
Occ: Business,
R/o House No. 205, Bhaurad, Akola,
Tah. & Dist. Akola. .... **NON-APPLICANTS**
RESPONDENTS

Mr. V.A. Patait, Advocate for Applicants.
Mr. M.K. Pathan, APP for Non-Applicant 1/State.
Mr. Sumeet Joshi, Advocate for Non-Applicant 2.

CORAM: **ROHIT B. DEO, J.**
DATE: **31st AUGUST, 2021.**

ORAL JUDGMENT:

Heard Mr. V.A. Patait, the learned counsel for the applicants, Mr. M.K. Pathan, the learned Additional Public Prosecutor for the non-applicant 1/State and Mr. Sumeet Joshi, the learned counsel for the non-applicant 2.

2. With consent, the application is finally heard.

3. The applicants were, at the relevant time, employees of Magma Fincorp Ltd.

4. The respondent 2 availed financial assistance of Rs.6,32,000/- (Rupees Six Lakh Thirty-Two Thousand only) to purchase a commercial vehicle. The Magma Fincorp Ltd. (Company for short) disbursed the loan, *inter alia* on the basis of hypothecation agreement.

5. The loan was to be repaid in forty-eight equal installments of Rs.21,460/-. The borrower alleges that he paid the

installments regularly till October, 2010, however, due to certain financial constrain he could not pay the installments in November and December, 2020. The borrower contends that he approached Mr. Pradeep Kulkarni and Mr. Milind Khandelwal, employees of the Company, who assured that coercive action shall not be initiated till three installments are due and payable and a notice is issued. The borrower alleges that on 17.12.2010 the vehicle came to be seized and when he attended the office of the Company on 18.12.2010, he was assured that if the amount due is deposited the vehicle will be released. According to the borrower, he deposited Rs.52,000/- (Rupees Fifty-Two Thousand only) on 18.12.2010 and while the receipt of the amount was acknowledged, the vehicle was not released on the premise that additional amount of Rs.31,680/- (Rupees Thirty-One Thousand Six Hundred Eighty only) will have to be deposited before the vehicle is released. The borrower alleges that he deposited further amount of Rs.31,680/- (Rupees Thirty-One Thousand Six Hundred Eighty only) on 21.12.2010 and yet, the vehicle was not released. It is on the basis of such allegations that the borrower instituted complaint dated 07.01.2011 alleging commission of offence punishable under sections 405, 406, 420, 120-B and 500 read with section 34 of the Indian Penal Code and sought direction to investigate under section 156(3) of the Criminal Procedure Code, 1973 (Code).

6. The Magistrate issued direction 156 (3) vide order dated 10.01.2011 pursuant to which the police registered offence on 12.01.2011, under sections 405, 406, 420, 120-B and 500 read with section 34 of the Indian Penal Code.

7. The applicants preferred an application under section 245 of the Code seeking discharge pointing out that it was the complainant who was a defaulter and notwithstanding the default the vehicle was, as a fact, released. The learned Magistrate rejected the application on the premise that the settlement of the dispute is without the intervention of the court. The applicants preferred Criminal Revision 105/2017 which is rejected by the learned Sessions Judge, Akola on the premise that the evidence under section 245(1) is not recorded, and therefore, the question of considering discharge does not arise.

8. With the assistance of the learned counsel, I have scrutinized the record, and I do not have even an iota of doubt, that the proceedings constitute an abuse of the process of law.

9. The material available on record, and Mr. Sumeet Joshi, the learned counsel appointed to represent the complainant does not dispute the position, reveals that there was a settlement between the parties pursuant to which the vehicle is released on 12.01.2011, on the same day of registration of the crime. That apart, the learned Magistrate need not have waited for recording of the evidence. Sub-section 2 of section 245 provides, that notwithstanding the provisions of section 245, it would be permissible to the Magistrate to pass an order of discharge, if the charge is groundless. In my considered view, even if every allegation in the complaint is taken at face value, no offence, as is alleged, is made out.

10. Notably, the company is not arraigned as accused. Nothing is placed on record to suggest that the complainant did have a contractual right to resist the seizure of the vehicle. Nothing is placed on record to suggest that any false representation was made or that the intent was to cause wrongful loss to the complainant.

11. The abuse of the process of law cannot be permitted to continue.

12. This application is allowed.

13. The order dated 21.03.2017 passed by the Chief Judicial Magistrate, Akola in RCC 1022/2011 and order dated 24.06.2019 passed by the Sessions Judge, Akola in Criminal Revision 105/2017 are quashed.

14. The proceedings initiated pursuant to complaint dated 07.01.2011 lodged by respondent 2 are quashed.

15. The applicants shall be deemed to have been discharged in Crime M-1/2011.

16. The fees of the appointed counsel be quantified and paid in accordance with the rules.

JUDGE

NSN