

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

CRIMINAL APPLICATION (APL) NO. 812 OF 2015

Bhimrao S/o. Tukaram Gaikwad,
Aged about 48 years, Occ. Service,
R/o. Harishanti Colony,
(Vishwashanti Colony), Amravati.

APPLICANT

---VERSUS---

1. State of Maharashtra,
through Police Station Officer,
Police Station, Badnera,
Distt. Amravati.
2. Kishor S/o. Girirao Khandar,
Aged about 29 years, Occ. Service,
R/o. Harishanti Colony, Near
Forest Colony, Kola Road,
Amravati.

NON-APPLICANTS.

Mrs. Juily Kuhite h/f Shri M.P Kariya, Advocate for the applicant.

Shri S.P.Deshpande, APP for non-applicant no.1.

Ms. Rashmi Ghantewar, Advocate h/f Shri S.S.Dhengale, Advocate
for non-applicant no.2.

CORAM : Z. A. HAQ AND
AMIT B. BORKAR, JJ.

DATED : 8.3.2021

ORAL JUDGMENT (PER : AMIT B. BORKAR, J.) :

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 challenging registration of the First

Information Report No.239/2015 registered with the non-applicant no.1 - Police Station for offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

2. The First Information Report came to be registered against the applicant with the accusations that the applicant by promising employment in Fishery Department accepted an amount of Rs. Six lakhs and has not given employment to the non-applicant no.2 and has, therefore, cheated the non-applicant no.2.

3. The applicant has challenged registration of the First Information Report by filing present application. This Court on 18.12.2015 issued notice to the non-applicants and directed that the Charge-sheet shall not be filed against the applicant. On 11.4.2016, this Court issued Rule and confirmed interim relief granted earlier.

4. The non-applicant no.2, in pursuance of the notice of this Court, filed reply stating that the non-applicant no.2 paid an amount of Rs. Six lakhs to the applicant for appointment on the post of Clerk in Fishery Department. It is stated that though the amount was paid, the applicant did not provide employment to the non-applicant no.2. It is submitted that there is sufficient material against the applicant.

5. On 23.3.2016, the non-applicant no.1 filed additional reply wherein it is stated that during the course of argument before this Court, it was noticed that affidavit dated 21.12.2015 filed by the non-applicant no.1 was not proper and, therefore, the non-applicant no.1 is filing additional affidavit. It is stated that the documents produced by the non-applicant no.2 does not appear to be genuine. It is further stated that the statement of the complainant and affidavit are doubtful, as the complainant does not want to maintain the complaint against the prime accused.

6. The non-applicant no.2 filed an agreement executed on Stamp of Rs.100/- dated 1.12.2015 and there are other affidavits of the non-applicant no.2 on record, which show that the non-applicant no.2 has received an amount and he has no grievance against the applicant.

7. Taking into consideration the reply filed by the non-applicant no.1 that the complaint of the non-applicant no.1 does not appear to be genuine and in view of the affidavit filed by the non-applicant no.1 that he does not want to prosecute the complaint against the applicant, we are satisfied that the prosecution against the applicant deserves to be quashed and set aside. The Apex Court in the case of ***Madan Mohan Vs State of***

Punjab reported in *(2008)4 SCC 582* has observed that when the chances of conviction are bleak, it is not advisable to overburden the Criminal Courts, which are already burdened. Therefore, we pass the following order:

ORDER

First Information Report No.239/2015 registered with the non-applicant no.1 for offence punishable under Section 420 read with Section 34 of the Indian Penal Code is quashed and set side.

Rule is made absolute in the above terms.

JUDGE

JUDGE