

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

Criminal Application (APL) No. 812 of 2016

Govind s/o Motiram Pawar Vs. State of Maharashtra through P.S.O. Manora

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

Court's or Judge's orders

Mr. A.Z. Jibhkate, Advocate and Mr. P.A. Jibhkate, Advocate for the
applicant
Ms. Shamsi Haider, APP for the respondent

CORAM : MANISH PITALE, J.

DATED : AUGUST 27, 2021

By this application, the applicant has challenged order passed by the Court of Judicial Magistrate First Class, Manora, dated 07/03/2011, whereby an application for discharge filed on behalf of the applicant was only partly allowed by discharging him for offence under Section 406 of the Indian Penal Code (IPC), while holding that the case against him shall proceed for offence under Section 420 of IPC. The applicant is also aggrieved by judgment and order dated 31/08/2013, passed by the Sessions Court at Washim, whereby the revision application was partly allowed and the Magistrate was directed to decide the application afresh. A further direction was given to the Investigating Officer to collect additional material on points observed in the said impugned judgment.

2. In the present case, FIR dated 10/12/2009, was registered against the petitioner, being the Secretary of the Management of a school, for offences under Sections 406 and 420 of IPC. The informant alleged that the applicants had deceived the son of the informant by promising a job in the school. It was claimed that the applicant had demanded amount of Rs.6,00,000/- from the informant and that half the amount was paid. It was claimed that although an appointment order was issued, but subsequently the son of the informant was told that his service was only up to a particular date i.e. 30/09/2009.

3. Upon completion of investigation, chargesheet was filed against the applicant for the aforesaid offences. At this stage, the applicant preferred the application for discharge before the Magistrate. It was contended that the appointment of the son of the informant was pursuant to a proper advertisement issued by the Management. There were two posts, one being a regular post and other being a leave vacancy. According to the applicant, the informant and his son were well aware that the son of the informant was appointed on a leave vacancy for a specific period up to 30/09/2009 and that, therefore, the material on record along with chargesheet was not enough for the matter to

proceed to trial against the applicant.

4. The Magistrate by the order dated 07/03/2011, held that ingredients of the offence under Section 406 of IPC, were not found on the basis of the available material, but, the matter deserved to proceed against the applicant for offence under Section 420 of IPC. Aggrieved by the same, the applicant filed the revision application before the Sessions Court. By the impugned judgment and order dated 31/08/2013, the Sessions Court partly allowed the revision application. The impugned order passed by the Magistrate was set aside and the Magistrate was directed to decide the application for discharge afresh. A specific direction was given to the Magistrate to call upon the Investigating Officer to collect additional material on the points observed in the said impugned judgment and order.

5. Mr. Jibhkate, learned counsel appearing for the applicant submitted that even if the material that had come on record along with chargesheet was to be taken as it is, no case was made out against the applicant for the alleged offences. It was submitted that the Magistrate had correctly held that no offence under Section 406 of the IPC was made out, but, the Magistrate committed an error in holding that the case deserved to proceed against the applicant for offence under Section 420 of IPC. Attention of this

Court was invited to the advertisement issued by the Management. It was contended that in pursuance of the said advertisement, the informant and his son, being educated persons had applied for the job and they were fully conscious that appointment order issued to the son of the informant was against the leave vacancy. It was submitted that ingredients of the offence of cheating under Section 415 read with 420 of the IPC, were not made out at all. As regards the impugned judgment and order of the Sessions Court, it was submitted that the basis on which the matter was remanded by the Sessions Court was non-existent. Attention of this Court was invited to paragraph 9 of the judgment and order of the Sessions Court, wherein it was observed that since the informant was not made a party to the application for discharge, the matter was required to be remanded. It was submitted that the informant was already dead when the application for discharge was taken up for consideration by the Magistrate. Therefore, the said ground was not available for remanding the matter. It was submitted that observations made in paragraphs 10 to 12 were wholly unsustainable and that the directions given to the Magistrate to call upon the Investigating Officer to collect the additional material was not based on any provision of law under the Code of Criminal Procedure (Cr.PC.). On this basis, it was submitted that the application deserved to be allowed.

6. Ms. Shamsi Haider, learned APP, appeared on behalf of the respondent - State. It was submitted that the Sessions Court had taken into consideration the material on record and it was found that certain material was necessary to be placed before the Magistrate for a proper consideration of the question as to whether the case deserved to proceed against the applicant for offence under Section 420 of the IPC.

7. Heard learned counsel for the rival parties and perused the material on record. This Court deems it appropriate to first examine the approach adopted by the Sessions Court in the present case. There can be no denial about the fact that the informant was already dead when the application for discharge filed on behalf of the applicant was taken up for consideration by the Magistrate. Therefore, the observations made in paragraph 9 of the impugned judgment and order of the Sessions Court are factually incorrect. It has proceeded on the basis that the informant was not made a party in the application for discharge and that on the said ground alone, the matter deserved to be remanded. The fact regarding demise of the informant was either not brought to the notice of the Sessions Court or was completely ignored. In any case, the said ground was unavailable and to that extent the impugned

judgment and order of the Sessions Court is rendered erroneous.

8. A perusal of paragraphs No.10, 11 and 12 of the impugned judgment and order of the Sessions Court demonstrates an erroneous approach adopted by the said Court. The Sessions Court has proceeded to make observations about the manner in which the police officer proceeded to investigate the matter. Certain observations have been made which can be said to be in the nature of conjectures and general comments regarding the case. Thereafter, an observation is made that the Investigating Officer has not properly collected the material when the matter was placed before the Magistrate and thereafter, it is stated that the Magistrate ought to have directed the Investigating Officer to carry out further investigation on the lines indicated in paragraph No.10, 11 and 12.

9. This Court is of the opinion that the aforesaid approach adopted by the Sessions Court was wholly erroneous and misplaced. While considering an application for discharge filed by the accused, all that the Court was supposed to consider was, as to whether the chargesheet and the material placed on record raised a grave suspicion, with regard to the alleged offences against the accused i.e. the applicant in the present case. Instead of entering into such an enquiry, the Sessions Court proceeded to

comment about the manner in which appointments are being made in Government schools and schools run by Zilla Parishads, wherein corruption appears to be the order of the day and how even the provisions of the Prevention of Corruption of Act, could have been invoked in the present matter. The whole approach of the Sessions Court to that extent is found to be erroneous and unsustainable.

10. The Magistrate has already discharged the applicant insofar as offence under Section 406 of the IPC was concerned and the limited enquiry that the Sessions Court was required to undertake was, as to whether the applicant deserved to be discharged for the offence under Section 420 of the IPC. Instead of examining as to whether the available material on record demonstrated the ingredients of offence under Section 420 of the IPC, the Sessions Court went on a complete tangent and irrelevant observations were made in paragraphs No.10, 11 and 12 of the impugned judgment and order. Consequently, directions were given at clauses No.3, and 4 of the impugned order, which are found to be wholly unsustainable.

11. In view of the above, this Court is of the opinion that in the interest of justice the impugned judgment and order dated 31/08/2013, passed by the Sessions Court, deserves to be set aside and the

matter needs to be remanded to the Sessions Court for considering the revision application afresh. The Sessions Court is expected to apply the settled position of law with regard to the manner in which applications for discharge are to be considered, in order to examine as to whether the available material on record demonstrates ingredients of offence under Section 420 of the IPC and whether the applicant deserves to face trial.

12. In view of the above, the application is partly allowed. The impugned judgment and order passed by the Sessions Court dated 31/08/2013, is quashed and set aside. The matter is remanded to the Sessions Court for the Criminal Revision Application No. 17/2011, filed by the applicant, to be considered afresh on its own merits.

13. Application is disposed of.

JUDGE