

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

18 CRIMINAL APPLICATION NO.1343 OF 2022

SANJAY BALASAHEB THOMBRE AND OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. R.B. Gite, Advocate for the applicants  
Mr. R.V. Dasalkar, APP for respondent No.1

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CORAM : SMT. VIBHA KANKANWADI AND  
RAJESH S. PATIL, JJ.

DATE : 17<sup>th</sup> AUGUST, 2022

**ORDER :** (PER : SMT. VIBHA KANKANWADI, J.)

1           The applicants seek quashment of the First Information Report lodged against them as well as charge sheet by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973.

2           Heard learned Advocate Mr. R.B. Gite for the applicants and learned APP Mr. R.V. Dasalkar for respondent No.1. It is not even necessary that the notice should be issued to respondent No.2.

3           It has been vehemently submitted on behalf of the applicants that on the basis of First Information Report lodged by the respondent No.2 Crime No.388/2020 was registered against the applicants with Police Station, Cantonment, Tq. and Dist. Aurangabad on 15.12.2020, for the offence punishable under Sections 420, 417 read with Section 34 of the Indian Penal Code, 1860. Perusal of the First Information Report would show that, in fact, the informant was approached by applicant No.1 on 10.02.2018 that his son is doing pigmy business and if amount is invested with him he would give double the amount. That means, it was the single transaction and then it is stated that like her others had also given amount. Even if we consider those contents as it is that amount was given to applicant No.1 and the other applicants who are wife and sons have nothing to do with the same. Applicant No.1 was engaged in a grocery shop at Aurangabad in 2018 and the informant and other witnesses used to take grocery items from his shop. Certain amount was, in fact, due from these persons and when he started demanding the said amount, applicant No.1 and his family members have been falsely implicated. No amount was deposited in the accounts of the applicants but only vague statements have been made. There is absolutely no evidence with the informant and the witnesses to support their statement that they had given lacs of rupees. In fact, if they would have given lacs of rupees they ought to have taken certain assurance by way of receipt. Now,

the investigation is over and charge sheet is filed. Perusal of the charge sheet would also show that there is no evidence against the applicants. When there is absolutely no evidence against them, it would be too harsh to ask them to face the trial.

4 Per contra, the learned APP submitted that perusal of the First Information Report as well as charge sheet would show that there is ample evidence against the applicants. The trial should go on and if there is any kind of defence available to the applicants they may take at the time of the trial. Certain witnesses have in fact transferred the amount online in the name of the applicant No.4, and in their statement they have stated as to why that transaction has been made. One Dhanraj Sagle had sent amount of Rs.24,000/- on the account of Vishal Gaike and Vishal Gaike in his statement says that he knew applicant No.1. He had told Vishal that one Mathura Ghuge gives him pigmy amount and she has no cash amount and, therefore, he would give his number to Mathura Ghuge, who would transfer the amount to Vishal. Mathura's relative Dhanraj then sent the amount online to Vishal and this witness Vishal says that he withdrew the amount from ATM and gave cash to applicant No.1. All these things would come on record in the evidence of these witnesses and, therefore, this is not the stage where the First Information Report and the proceedings would be quashed.

5           At the outset, it is to be noted that applicant No.1 is stated to have collected the amount, as alleged in the First Information Report, when he was residing at Aurangabad. He had approached different persons by saying that his son is doing pigmy business and promised them to give double the amount. Believing in his words the informant is stated to have given amount of Rs.2,16,000/- and the duration was around two years. In March, 2020 she asked for the return of the amount, but then he started avoiding. He had then shifted to native place Dindrud, Tq. Majalgaon, Dist. Beed. In July, 2020 informant went along with some other persons, who had similarly invested the amount with applicant No.1, then, applicant No.4 threatened them and asked them to go. According to the informant, in all amount that was given by her and the other persons is amounting to Rs.14,94,000/-. It is stated in the First Information Report that not only applicant No.1 but his wife applicant No.2 had also made the representations to those persons and applicant No.3 had also actively participated. The statement of the witnesses under Section 161 of the Code of Criminal Procedure clarifies as to what representation was made to each one of them by applicant No.1, supported by applicant No.2 and then how applicant Nos.3 and 4 were supporting the parents in avoiding the payment. The transaction and involvement of said Vishal Gaike is explained in his statement as well as statement of Dhanraj Sagale, wherein the amount that was received is online. Now, how those

persons had received or had that much of amount and whether they had given that amount at one time or not would be the part of explanation. It is not always necessary that a money transaction should be supported by documentary evidence, but it depends upon the explanation also. When it is a matter of cheating, then, it cannot be so quashed and set aside. Another fact to be noted is that to some persons it was said to be pigmy business and for some it was stated to be *Bhishi*, which might be monthly or even yearly, sometimes. When there is prima facie evidence, this cannot be the fit case where the powers under Section 482 of the Code of Criminal Procedure would be invoked. As regards the outstanding amount from the informant and witnesses to applicant No.1 is concerned, it is for him to lead the evidence and it cannot also be taken into consideration in this application. Application, therefore, stands rejected.

( Rajesh S. Patil, J. )

( Smt. Vibha Kankanwadi, J. )