IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

936 CRIMINAL APPLICATION NO. 1020 OF 2021

MOHAMMAD HAROON S/O YASIN SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER
.....
Advocate for Applicant : Mr. Chavan Sudhir K.
APP for Respondent No.1-State : Mr. S. D. Ghayal
…..

CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 31st MARCH, 2022

PER COURT:-

1. By consent of the parties, heard finally at admission stage.

2. The applicant is seeking quashing of F.I.R. bearing No. 06 of 2001 registered with Basmath (Vasmat) Police Station, district Hingoli for the offences punishable under Sections 420, 465, 468, 470, 471 r/w 34 of I.P.C.

3. On the basis of the complaint lodged by respondent No.2, who is R.T.I. worker, the aforesaid crime came to be registered against 13 persons, including the present applicant. It has been alleged in the complaint that co-accused Gajanan Pralhad Thombar, resident of Ranjona, Taluka Basmathnagar, has allegedly prepared false documents in the name of deceased Kaniram Namdeo Rathod and obtained a crop loan of Rs.1,05,000/- from the Union Bank of India in the name of said deceased Kaniram. It has been alleged in the said complaint that co-accused Gajanan has obtained loan by joining

hands with the Bank officials and others. So far as the applicant is concerned, he is legal advisor on the panel of the said bank and he has issued search report in respect of title of the property.

4. Learned counsel for the applicant submits that the applicant is a legal practitioners since 1991 and his role is limited to the extent that he has searched the record about title in respect of the property to be mortgaged with the bank and it is not his duty to find out as to whether the person in whose name that property is standing and whether he is the same person or persons before the Bank. It is also not his job to make search as to whether the said person is alive or not. Learned counsel for the applicant submits that even though the allegations made in the complaint are accepted as it is, no case is made out against the applicant. The applicant has merely searched the record in respect of title of the property and submitted a search report in the bank. Learned counsel submits that the applicant is not connected in any manner with the offence of forgery or preparation of false documents.

5. Learned A.P.P. submits that the property which was mortgaged for obtaining the loan was standing in the name of one Kaniram, who died way back in the year 2005 and a loan proposal in the name of deceased Kaniram was submitted with the Union Bank of India in the year 2018. Learned A.P.P. submits that though co-accused Gajanan Thombar has allegedly prepared all bogus

documents in the name of deceased Kaniram, however, the other accused persons, including the present applicant, have helped him for availing the loan from the bank in the name of deceased Kaniram by submitting false and forged documents. Learned A.P.P. however fairly accepts that said co-accused Gajanan Thombar has paid entire borrowed amount in terms of the settlement arrived at with the Loan Officer.

6. We have carefully gone through the contents of the complaint and also perused the police papers. So far as original accused Nos. 1 to 4 are concerned, they are bank employees including Manager, Cashier and Loan Inspector. Original accused No.5 is the witness for identification at the time of opening of the account. Co-accused No.7 is a stamp vendor, co-accused No.8 is Talathi, co-accused No.9 is Circle Inspector, co-accused No.10 is Deputy Registrar of registration office, co-accused No.11 is a person who has prepared false and bogus identity card and accused Nos. 12 and 13 are the persons who allegedly prepared bogus Aadhaar card and PAN card. So far as the applicant, who is the legal advisor, is concerned, it has been merely stated in the complaint that he has given search report in respect of the property to be mortgaged.

7. We have carefully gone through the contents of the search report/title report from the investigation papers. It is mentioned in the said search report as to the name of the account and the details of

the borrower, nature of the immovable property alongwith the property details and further, the nature of the ownership including the flow of title is mentioned as a result of the search. It further appears that the documents are also referred while taking search of the title. The applicant has further certified that he has examined each and every page of the documents required for giving title clear certificate and did not find the transaction under the document as sham and fictitious. He has accordingly recommended the registration of mortgage as per the policy of the bank. Even accepting the role played by the applicant as it is, no case is made out against him. Even if it is proved that the applicant has issued search report, he cannot be convicted for any of the charges levelled in the F.I.R. against him.

8. In the case of ***State of Haryana and Others Vs. Ch. Bhajan Lal and Others*** reported in **AIR 1992 SC 604**, in para No. 108 of the judgment, the Supreme Court has formulated categories of cases by way of illustrations wherein such quashing power under Section 482 of Cr.P.C. could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. Those categories 1 to 7 are reproduced herein below :-

> "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. In para 109 of the above judgment, the Supreme Court has observed that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the

rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint.

10. In the facts of the instant case, the category Nos. 1 and 3 stand attracted.

11. In the case of ***Shafiya Khan @ Shakuntala Prajapati v. State of U.P. and another*** [Criminal Appeal No.(s). 200 of 2022 decided by the Supreme Court by Judgment dated 10.02.2022], in para 19 the Supreme Court has made the following observations:-

> *"19. Although it is true that it was not open for the Court to embark upon any enquiry as to the reliability or genuineness of the allegations made in the FIR, but at least there has to be some factual supporting material for what has been alleged in the FIR which is completely missing in the present case and documentary evidence on record clearly supports that her Nikah Nama was duly registered and issued by competent authority and even the charge sheet filed against her does not prima facie discloses how the marriage certificate was forged."*

12. Learned counsel for the applicant has placed his reliance on the judgment in the case of ***Central Bureau of Investigation, Hyderabad v. K. Narayana Rao***, reported in **(2012) 9 SCC 512**,

wherein, in the identical facts of the case, in para 31 of the judgment, the Supreme Court has made following observations:-

> *"31. However, it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interests of the client and it is the lawyer's responsibility to act in a manner that would best advance the interest of the client. Merely because his opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and cannot be charged for the offence under Sections 420 and 109 IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link or evidence to connect him with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein."*

13. In the instant case, even in the given set of allegations, the applicant being a lawyer issues a search report in the interest of his client i.e. the Union Bank of India, he cannot be connected with the criminal prosecution in any manner. Even he is not liable for gross negligence or professional misconduct in the facts of the present case.

14. In view of the above discussion and in terms of the ratio laid

down by the Supreme court in the aforesaid cases, we proceed to pass the following order:-

O R D E R

I. Criminal application is allowed in terms of prayer clause “C”.

II. Criminal application is accordingly disposed of.

(SANDIPKUMAR. C. MORE, J.) **(V. K. JADHAV, J.)**

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