

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 CRIMINAL APPLICATION NO.1482 OF 2021

GOVINDRAJAN SWAMINATHAN AND ANOTHER
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. Akshay Kulkarni and Mr. P.P. Mandlik, Advocates for applicants

Mr. S.J. Salgare, APP for the respondent No.1

Mr. S.S. Patil, Advocate for the respondent No.2

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

DATE : 02nd AUGUST, 2022

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

1 By invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973, the applicants seek quashing and setting aside the charge sheet in Regular Criminal Case No.711/2020 pending on the File of learned Judicial Magistrate First Class, Jalna, arising out of Crime No.380/2020 dated 03.07.2020, registered with Sadar Bazar Police Station, Dist. Jalna, for the offence punishable under Section 420, 406 read with Section 34 of the Indian Penal Code, 1860.

2 It will not be out of place to mention here itself that after the disinclination is shown to grant any relief to applicant No.1, upon the instructions, the learned Advocate for the applicants sought withdrawal of the application to the extent of applicant No.1, with liberty to file application for discharge before the learned Trial Judge. There is no hurdle in allowing the same. The matter was considered for applicant No.2.

3 Heard learned Advocate Mr. Akshay Kulkarni for applicant No.2, learned APP Mr. S.J. Salgare for the respondent No.1 and learned Advocate Mr. S.S. Patil for the respondent No.2.

4 The respondent No.2 – original informant is medical practitioner. He is Cardiologist. He returned from United States of America and started his practice at Jalna. For his hospital he was in need of Cath Lab machine. Thereafter he came in contact with accused No.1 i.e. present applicant No.1 through one Technician. Applicant No.1 had met the informant – Dr. Pandharinath Mande of Om Hospital, Jalna somewhere in February, 2019 and promised that he imports Cath Lab machine and installs it as well as he gives the after purchase services. According to the informant, the applicant No.1 had promised that he would provide services three years after sales and also to repair the machine. The faith was created and then informant had placed

an order for a Cath Lab machine, for which price was quoted at Rs.1,20,00,000. The First Information Report says that by the end of 28.02.2019 he had paid amount of Rs.75,00,000/- to applicant No.1. The machine was provided in September, 2019, however, according to the informant, it was not as per his demands and of high quality. The machine was started on 18.09.2019 but developed problem within two days. It was repaired on 24.09.2019 and after 15-20 days its work was stopped. He was thereafter contacted several times the applicant No.1, but he avoided on one or the other ground. At one time the applicant No.1 had fascinated the talk between the informant and applicant No.2, who is alleged to have been introduced as colleague of applicant No.1. Informant says that even applicant No.2 had given promises several times and killed the time. According to informant, thereafter also several times the machine developed problems and after repair, it used to get operated for few days only and therefore, informant says that applicant Nos.1 and 2 had cheated him.

5 Copy of the charge sheet would disclose the entire evidence that has been collected is against applicant No.1 and even the applicant No.1 along with this petition has given the extracts of the E-mails exchanged between informant and himself. It appears that the applicant No.1 has the defence that he has given a good quality machine, but for technical reasons

there might be some problem. However, as aforesaid, we are not considering the case of the applicant No.1, but we are restricting ourselves to applicant No.2. The informant has not at all stated that any amount was paid to applicant No.2 nor the investigation papers i.e. the charge sheet discloses that any amount was received by applicant No.2 from applicant No.1. The First Information Report does not disclose as to what were the dialogues between the informant and the applicant No.2. Till the machine was supplied by applicant No.1 to the informant, applicant No.2 was not at all in picture. Therefore, there is absolutely no evidence against the applicant No.2 to array him in the offence punishable under Section 420, 406 read with Section 34 of the Indian Penal Code. It would be a futile exercise to ask him to face the trial and, therefore, the entire proceedings including the First Information Report against him deserves to be quashed and set aside under Section 482 of the Code of Criminal Procedure Code, in view of decision in **State of Haryana and others vs. Ch. Bhajan Lal and others, AIR 1992 SC 604**. Hence, we proceed to pass following order.

ORDER

- 1 Application is hereby partly allowed.
- 2 Application in respect of applicant No.1 is withdrawn and

disposed of accordingly.

3 Application in respect of applicant No.2 is allowed. The proceeding i.e. Regular Criminal Case No.711/2020 pending before the learned Judicial Magistrate First Class, Jalna in pursuance to First Information Report No.380/2020 dated 03.07.2020 registered with Sadar Bazar Police Station, Jalna, for the offence punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code, 1960, is hereby quashed and set aside, to the extent of applicant No.2 Vidyasagar Vasantao Kulkarni.

4 Application stands disposed of accordingly.

(Rajesh S. Patil, J)

(Smt. Vibha Kankanwadi, J.)

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