

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2465 OF 2020

BALAJI S/O DEVRAO DESAI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Kulkarni Akshay D.
APP for Respondent/State : Mr. R. V. Dasalkar
Advocate for Respondent No.2 : Mr. R. K. Ingole

...

CORAM : SARANG V. KOTWAL &
BHARAT P. DESHPANDE, JJ.

DATE : 30th JUNE 2022.

Per Court :

1. The applicant has preferred his application for quashing of FIR lodged vide CR No. 345/2019 registered at Shivaji Nagar Police Station, Nanded and the subsequent proceedings in R.C.C. No.516/2020 pending on the file of Learned II Joint Civil Judge, Senior Division and Judicial Magistrate First Class, Nanded for commission of offence punishable under Section 409 of the Indian Penal Code.
2. Heard learned Counsel for the parties.

3. The FIR is lodged by Shri. More, the Assistant Municipal Commissioner, Municipal Corporation, Nanded Waghala. He has stated that the applicant was working with the Municipal Corporation since January, 2018 as Sanitary Inspector. Part of his duty was of collecting licence and services tax. It is mentioned in the FIR, some time before the registration of FIR, the Assistant Commissioner, Shri. Kulkarni checked the receipts' books in possession of the Applicant. At that time, certain discrepancies were found. These discrepancies are the allegations against the applicant. They are as follows:

(i) Receipt No.5, Receipt Book No.99 : the Receipt dated 30.04.2019 mentions that Rs.16,200/- were collected from Sahyadri Hospital, Shivaji Nagar. Out of which, only Rs. 10,800/- were deposited in the Regional Office. Remaining Rs. 5,400/- were not deposited.

(ii) Receipt No.2, Receipt Book No.99 : the Receipt dated 30.04.2019 was in respect of Rs. 7,200/-. Out of which, Rs. 5,400/- were deposited and remaining Rs. 1,800/- were not deposited.

(iii) Receipt No.66, Receipt Book No.90 : the Receipt dated 19.03.2019, mentions that amount of Rs. 16,200/- were collected from Radhika Hospital and Nursing Home, Shivaji Nagar. Out of which,

Rs.10,800/- were deposited and Rs.5,400/- were not deposited.

4. Thus, it is alleged the total misappropriation was to the tune of Rs. 12,600/-. On this basis, FIR was lodged. The investigation was carried out and the charge-sheet was filed.

5. Learned Counsel for the applicant submitted that the allegations in the FIR are falsified by the investigation carried out and the amount mentioned in the receipt are exactly the amount, which were deposited. Therefore, no offence is made out against the applicant.

6. Learned APP as well as learned Counsel for Respondent No.2 relied on the charge-sheet and the averments in the FIR to oppose this application.

7. We have considered these submissions and in particular we have perused the Receipts. As far as Receipt No.5 in Book No. 99 is concerned, the allegations are that Rs.16,200/- was collected and Rs. 10,800/- were deposited. However, the receipt itself shows that the

amount of Rs.10,800/- and not amount of Rs.16,200/- was collected.

8. As far as Receipt No.2 in Book No.99 is concerned, the allegations are that he had collected Rs.7,200/- and had deposited Rs.5,400/-. However, the receipt itself shows that amount of Rs.5,400/- was collected and as per the FIR the same amount was deposited.

9. As far as Receipt No.66 in Book No.90 is concerned, the allegations are that the amount of Rs.16,200/- was collected and only Rs.10,800/- was deposited. However, the said receipt shows that the amount of Rs. 10,800/- itself was collected and as per the FIR that amount was deposited.

10. It is quite clear that the FIR is based on wrong information. The FIR itself mentions certain amounts which were duly deposited by the Applicant and those amounts are mentioned in the above three Receipts. Therefore, no offence is made out against the Applicant. The receipts are taken in charge from the possession of the Complainant itself. Therefore, there is no scope for the Applicant to manipulate the

receipts. In this view of the matter, it is established even at this stage the Applicant had not committed any offence. Only on the basis of some vague report, this FIR was lodged and the Applicant has unnecessarily suffered during the investigation. Learned Counsel for the Applicant states that for some period he was suspended on the basis of these allegations. Thus, the applicant had suffered in connection with the allegations, which are established to be untrue from the material collected in the charge-sheet. In this view of the matter, continuation of criminal proceedings against him would be a clear abuse of process of law. Hence, the following order.

ORDER

- (i) The application is allowed in terms of prayer clause 'C'.
- (ii) The proceedings R.C.C. No.516/2020 pending on the file of Learned II Joint Civil Judge, Senior Division and Judicial Magistrate First Class, Nanded, arising out of CR No. 345/2019 registered at Shivaji Nagar Police Station, Nanded, are quashed and set aside.

- (iii) The amount of Rs.12,600/-, which the applicant had deposited in the Corporation, shall be refunded back to him.

11. The application is disposed of.

[BHARAT P. DESHPANDE, J.]

[SARANG V. KOTWAL, J.]

Najeeb...