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

CRIMINAL APPLICATION (APL) NO.616 OF 2022

Mr.Viswanath s/o Late Vishnuprasad Toshniwal,
Proprietor of Viswanath & Co., aged: 37 years, profession:
Chartered Accountant, Addressed At: House No.8-3-903/
4/4/, Flat No.201, Krishna Enclave, Road No.5, Nagarjuna
Nagar, Sri Nagar Colony, Hyderabad TS 500073 IN. Mob:
+91 – 9948041456 (Accused No.7). ..... **Applicant**.

:: **V E R S U S** ::

1. State of Maharashtra, through the Station House
Officer, Police Station: Sewagram, MIDC District
Wardha, MH 442001 IN.

2. Mr.Shrikant s/o Gopilal Rathi, aged: 56 years,
Occupation: business, Addressed At: Gopuri, '9' Opposite
Dadaji Dhuniwale Math, Bahubali Nagar, Nagpur Road,
Wardha MH 442001 IN (Complainant). ..... **Non-applicants.**

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Shri A.Agrawal, Counsel for the Applicant.
Shri S.M.Ghodeswar, Additional Public Prosecutor for the State.

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CORAM : V.M.DESHPANDE & AMIT B.BORKAR, JJ.
DATE : MAY 02, 2022

ORAL JUDGMENT (Per : Amit B.Borkar, J.)

1. Heard learned counsel Shri A.Agrawal for the applicant and learned Additional Public Prosecutor Shri S.M.Ghodeswar for the State. **Rule**. Rule made returnable forthwith. Heard finally by consent of learned counsel for respective parties.

2. By this application, under Section 482 of the Code of Criminal Procedure, the applicant challenges First Information Report

No.619/2021 registered with Sewagram Police Station, Wardha, for offences punishable under Sections 34, 409, 420, 467, 469, and 506 of the Indian Penal Code read with Sections 103 and 104 of the Trade Marks Act, 1999.

3. Non-applicant No.2 is the complainant. He lodged the First Information Report against seven accused persons, including the present applicant. The applicant is accused No.7 in the First Information Report. As per the First Information Report, the accused persons making fake signatures prepared forged documents in the name of the complainant's company, pretended them to be genuine documents, and committed misappropriation of money. It is alleged that accused persons borrowed amounts by using those documents. As per the First Information Report, accused persons in collusion with the applicant committed aforesaid offences, which are punishable under the Indian Penal Code.

4. Learned counsel for the applicant submits that the applicant has been implicated in the crime falsely. He submits that the applicant has played no role in the crime and, therefore, in no way he is connected with offences levelled against him. Learned counsel states that Investigating Officer filed its say. The said say itself was treated as a reply of the Public Prosecutor to the bail application filed before the

learned Judge below. In support of submissions, learned counsel invited our attention to the reply and submitted that Investigating Officer has also mentioned in the reply that, *at present*, no document is available with investigating agency showing involvement of the applicant in offences levelled against the applicant. Therefore, learned counsel, on the basis of the said reply, submits that since in no way concerned with offences, the First Information Report lodged against the applicant deserves to be quashed.

5. Per contra, learned Additional Public Prosecutor for the State submits that allegations levelled against the applicant are to the effect that accused persons in collusion with the applicant making fake signatures prepared forged documents in the name of complainant's company; pretending to be genuine documents committed misappropriation of money, and have borrowed amounts by using those documents. He submits that investigation of the crime is going on, and as such, at this stage, it cannot be said at all that investigating agency has no material against the applicant.

6. Having considered allegations levelled against the applicant in the First Information Report along with the reply tendered by the Public Prosecutor to the bail application filed before the learned Judge below, we find that offences levelled against the applicant are of

such nature in which a detailed investigation is necessary as the same offences violate provisions of the Trade Marks Act. In our view, the investigating agency needs to be given an opportunity to investigate the crime in question. At this stage, we cannot adjudicate whether the applicant is involved in offences levelled against him or not. *Prima facie* reading of the First Information Report reveals the nature of the allegation mainly to the effect that it has been discovered through the GST portal that accused Nos.1 and 2 have opened a new company in the name of "Micro Plex (India) and have done GST registration. It also reveals that to hide all illegal acts and recover the money of the complainant's company, accused persons used licence/permission and, by using the trademark, cheated departments/customers/public and grabbed amount fraudulently. Accused No.7 is Chartered Account of Company, while accused Nos.1 and 2 are Directors.

7. In the context of the aforesaid allegations, we are satisfied that investigating agency has to be given an opportunity to complete the investigation into the crime. If, ultimately, after completion of the investigation, it reveals that the applicant has no role to play in offences alleged against him, investigating agency is bound to act in accordance with the law.

8. The Honourable Apex Court in the case of **Neeharika**

Infrastructure Pvt. Ltd.v. State of Maharashtra reported in AIR 2021 SC 1918 has taken the view that the High Court, while exercising powers under Section 482 of the Code of Criminal Procedure, the Court should keep in mind that the Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence; it would not thwart any investigation into the cognizable offences; it is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on; the power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of the death penalty). The Court, while examining an FIR/complaint, quashing of which is sought, cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint; Criminal proceedings ought not to be scuttled at the initial stage.

9. *Prima facie* reading of the First Information Report lodged against the applicant, we are satisfied that this is not a case wherein the High Court should exercise its inherent powers under Section 482 of the Code of Criminal Procedure as it requires detailed investigation.

10. In such a view of the matter, since there is no merit in the application, the criminal application is rejected and disposed of accordingly.

Rule stands discharged.

JUDGE **JUDGE**

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BHUSHAN RANA WANKHEDE

Digitally signed by BHUSHAN RANA WANKHEDE
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