

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2118 OF 2021

1. Vijaykumar Vanji Patil
2. Vimalbai Vanji Patil
3. Manisha Yogesh Patil ...Applicants

Versus

The State of Maharashtra and Another ...Respondents

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Mr. V. B. Patil, Advocate for the Applicants.

Mr. V. S. Badakh, APP for Respondent No. 1 – State.

Mrs. K. S. Kulkarni (Sonpawale), Advocate for Respondent No. 2 (appointed)

Mr. T. M. Venjane, Advocate for Respondent No. 2 (appointed).

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CORAM : R.M. JOSHI, J

DATE : OCTOBER 16, 2023

PER COURT:

1. Applicants are accused in connection with Crime No. 54/2018 registered on 13.04.2018 for the offences punishable under Sections 498-A, 406, 323, 504, 506 read with 34 of Indian Penal Code.

2. Respondent No. 2 is informant. On the basis of allegations made by her, offence came to be registered and on completion of investigation, charge-sheet was filed. Accused Nos. 3 to 11 filed proceedings before

this Court for quashment of charge-sheet. The said proceeding came to be allowed and the charge-sheet was quashed against them. After filing of the charge-sheet, came was committed and being registered as RCC No. 272/2018. During the pendency of trial, Respondent No. 2 approached the Nawapur Police Station and files complaints dated 04.07.2018, 25.07.2018 & 11.06.2018 against Applicant No. 1 and Branch Managers of District Central Co-operative Bank, Nawapur Branch and Union Bank of India for alleged misappropriation of her amount. According to Applicants, concerned police station conducted investigation and submitted report of no substance was found in the complaints. An intimation was also given to informant in this regard. It is submitted that in suppression of aforestated facts, the Respondent No. 2 filed an application below Exh. 81 before learned Magistrate in RCC No. 272/2018 and has prayed for investigation under Section 156(3) or 173(8) of CrPC. Learned Magistrate without recording any reasons passed order for further investigation.

3. Learned Counsel for Applicants submits that grievance made by the Respondent No. 2 is already met

with by the investigating agency and after due investigation, her report came to be lodged indicating that there is no substance in the allegation of Respondent No. 2 against Applicant No. 1 and the Branch Managers of respective banks. It is submitted that the intention of Respondent No. 2 is to caused harassment to the Applicants and which can be seen from the fact that in spite of notices issued by the concerned police station, Respondent No. 2 has never come to give her specimen handwriting and signature. In support of his submissions, he placed reliance on the judgment of Hon'ble Apex Court in case of State through CBI Vs. Hemendhra Reddy and Another, 2023 SCC OnLine SC 515.

4. Learned appointed Counsel for Respondent No. 2 and learned APP opposed the application. It is their contention that the allegation against the Applicant No. 1 and the officials of the bank is that by forging her signature amounts lying in her account were withdrawn. It is further contention that in order to ascertain as to whether the Respondent No. 2's signature were forged or not, obtainment of specimen signature/handwriting of informant as well as Applicant

No. 1 is necessary. By referring to the charge-sheet, it is submitted that no such document is found in the charge-sheet which indicates that there is no proper investigation of the said crime.

5. Perusal of the FIR and the complaint made by the Respondent No. 2 clearly indicate that it is alleged against Applicant No. 1 that by forging her signatures, the money belonging to her and lying in the bank accounts was withdrawn. In order to inquire into the said allegations, it is just and necessary that at least specimen handwriting and signatures of the accused are obtained or admitted signature/writing is seized and same are sent for examination by expert. Perusal of the charge-sheet as well as report of the investigating agency do not show that any such exercise being done in the present case. *Prima facie*, therefore, it is clear that no evidence has been collected during the course of investigation in order to ascertain where there is substance in the allegation of forgery of her signature and withdrawal of amount. These facts clearly indicate that there is substance in the grievance made by the Respondent No. 2 about improper investigation.

In such circumstances, learned Magistrate was justified in directing the investigating agency to conduct further investigation under Section 173(8) of CrPC.

6. Learned Counsel for the Applicants has also raised objection with regard to the application filed by Respondent No. 2 seeking direction of further investigation. It is his contention that no such application could have entertained by learned Magistrate as it is only for the investigating agency to carry out further investigation under Section 173(8) CrPC.

7. As far as above submission is concerned, perusal of the record indicates that the said application has been filed through public prosecutor though under the signature of Respondent No. 2. Hon'ble Apex Court in case of State through CBI (supra) observed that

"from a cursory reading of the observations, it is discernible that after getting a final report under section 173(2) of the said Code, the concerned Magistrate is having power, either to take cognizance or to direct the investigating agency to

conduct further investigation as per Section 173(8) of the said Code. Even a mere reading of Section 173 of the Code and its sub-clauses, would get to show that after getting a final report, the concerned Magistrate is having unfettered right of granting further investigation as envisaged in sub-clause(s) of Section 173 of the said Code".

8. In case of Anant Thanur Karmuse Vs. State of Maharashtra and Others, 2023 (2) SCC (Cri) 568, the Hon'ble Apex Court has held that the victim has fundamental right of fair investigation and fair trial. Mere filing of the charge-sheet and framing of the charges cannot become an impediment in ordering further investigation/re-investigation, if facts so warrant.

9. This Court finds no substance in the contention of learned Counsel for the Applicants that the Magistrate have power for issuing such directions at the instance of informant and after filing of the charge-sheet. In view of above, there is no merit in challenge to the impugned order. Hence, Petition stands dismissed.

10. It is clarified that observations with regard to the merit of the case are *prima facie* & only for the decision of the Petition, and the same shall not be binding upon trial Court at any stage of the concerned proceedings.

11. Fess of Mrs. K. S. Kulkarni (Sonpawale), learned Counsel appointed for Respondent No. 2, is quantified @ Rs. 6,000/- (Rupees Six Thousand Only) to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(R.M. JOSHI, J.)

Malani