IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3113 OF 2019
DNYANESHWAR @ AMOL PANDIT KARDAIKAR
VS
STATE OF MAHARASHTRA

Mr. S. S. Jadhav, Advocate for the applicant
Mr. P. M. Kulkarni, APP for the respondents/State

CORAM : KISHORE C. SANT, J.
RESERVED ON : 28-03-2023
PRONOUNCED ON : 26-04-2023

P. C. :-

1. The applicant being aggrieved and dissatisfied by the order below Exh.5 dated 27-10-2015 passed by the learned JMFC, Jalgaon in RCC NO. 531 of 2011 thereby rejecting his application seeking discharge under Section 239 has approached this court.

2. The applicant is shown as accused No.4 in RCC No. 531/2011.

3. Facts in short are that:

a] One Mukesh Ahuja lodged an FIR on 22-08-2010 only against accused No.1 namely Yuvraj Khaire for the offences punishable under Sections 381, 411, 414, 112, 116 read with Section 34 of the Indian Penal Code.

b] It is the allegation in the said FIR that on 17-08-2010 he was going to bank to deposit Rs. 2 lakhs in his Maruti Swift Car with a driver i.e. accused No.1 Yuvraj. On the way to the bank he stopped near one hospital to see his relative who was admitted. After seeing the patient he came out of the hospital and found that his car was missing. He called Yuvraj on cell phone. Yuvraj told that he would come in short time. On asking him where is cash bag he told that bag is with him. However, he did not come early. The informant kept trying to call the driver. It was found that he switched off his mobile. A search was taken of the car and the driver. The informant even approached the father of the accused No.1. His father also tried calling accused, but could not contact.

c] Later in the evening car was found and the said car was opened by the duplicate key. On opening the car, cash bag containing Rs. 2 lakhs was found missing. Said driver was not found even for 2-3 days after the incident. Thus, the complaint came to be lodged after 4-5 days. The informant thereafter gave supplementary statement on 23-08-2010, in which he stated that in fact the amount was not Rs. 2 lakhs but it was Rs. 3 Lakhs. He further stated that there was also a camera kept in the car of Nikon company and same was also found missing. On 13-10-2010 he gave second supplementary statement stating that amount in the cash bag was in fact Rs.20 lakhs. He stated that though there was amount of Rs.20 lakhs he himself would have come in trouble and therefore he stated amount to be only Rs.2 lakhs. He was with the hope that after the accused is caught he will return the money. Thus, at three different occasions the informant told three different figures.

d] On 06-02-2011 brother of the informant, namely, Mahesh, whose statement was also recorded on 22-08-2010 again gave supplementary statement on 06-02-2011. He stated that they received information that accused No.1 was at Bhopal. On receiving that information they proceeded to Bhopal alongwith police. They found that accused No.1 was already arrested for an offence under the Arms Act in Bhopal. A letter was given to the Bhopal Court. On 11-10-2010 Bhopal Police produced accused No.1 in Jalgaon Court. On that it was revealed that accused had given Rs. 16 lakhs to his uncle Pandit Kardaikar and Sulochana Pandit Kardaikar on the say of his cousin i.e. present applicant. He was told to go somewhere at least for two years. After two years amount would be returned to him as by that time case would become weak.

e] Investigation proceeded. During the investigation it is alleged that the name of this applicant transpired and so he came to be added as accused No.4 as the amount of Rs. 16 lakhs was given to his parents. Charge-sheet also came to be filed. The applicant filed an application under Section 239 on the ground that he is not involved in any manner in the offence. His name is transpired only in the statement that was recorded on 06-02-

2011 for the first time where the brother of the informant alleged that the accused No.1 had given amount to the parents of the applicant on the say of this applicant. It is further ground of the applicant that there is no statement showing that this applicant was at any point of time with the accused No.1. The alleged recovery is also found with the parents of the applicant who stayed in the lodge by giving fictitious names. It is further stated that he was working in the police and was on duty. There is nothing to show that he was on duty. Hence, nothing to indicate that this applicant contacted in any manner to the accused No.1 and therefore, he needs to be discharged.

4. Learned APP vehemently opposed the application. He submits that the applicant is in police force. He is in fact master mind in this entire episode. Accused No.1 happens to be his cousin brother and accused Nos. 2 and 3 are his parents. He only asked them to stay in lodged at Shegaon by giving fictitious names. It is only at his instance the other accused would dare to commit acts and prayed for rejection of the criminal application

by supporting the impugned order passed by the learned Sessions Judge rejecting the application.

5. This court finds that the learned Sessions Court while passing the order of rejection has mainly considered that there is a material in the form of statements on record showing involvement of the present applicant. The court further observed that there are allegations of common intention against all the accused persons.

6. Considering the submissions and the arguments advanced this court has gone through the statement of the witnesses and the informant. Though in the first statement which is treated as FIR there is no involvement shown of the present applicant. However, it was at the initial stage and even accused No.1 was not found till that time. Even in the statement dated 23-08-2010 it is seen that till then accused No.1 was not found. In the third statement that was recorded on 13-10-2010. His involvement was found only during the course of the

investigation. It is submitted that accused No.1 happens to be nephew of the parents of the present applicant. Thus, there is relation between accused Nos.1 and 4. Accused No.4 is son of sister of father of accused No.1. In his statement it has come that all the accused persons were not traced even at their house. This applicant for the relevant period was absent from duty. His statement further shows that accused No.1 was in contact with the present applicant. It is this applicant who was trying to settle the matter by talking to the brother of the informant. Father of the present accused returned the amount of Rs.16 lakhs in the court to Mahesh Ahuja by executing affidavit. Copies of which were given to father of the present applicant and the applicant on that he told Mukesh since now amount is received by him they should settle the matter. Thus, the role of the present applicant is seen. This Court, therefore, holds that there is at least some material against this applicant. The fact about their relation between the parties is not denied. Though it is ground of the present applicant that there is nothing on record to show that he was absent from the duty. However by looking at the statement dated 06-02-2011 of Mahesh it is seen that for the relevant period this applicant was not on duty.

7. For considering the application under Section 239 what is required to be seen is not that whether there is sufficient material to convict the accused but whether there is a material to proceed against accused persons. At this stage even quality of the evidence is not to be seen. The court has to only see that there is some material showing the involvement of the accused. On applying this test it is clearly seen that the remaining accused persons are related to the applicant. The applicant is in the police force. He was absent from the duty. All these things prima facie goes to show his involvement in the offence. He has also taken lead in trying to settle the matter after the amount of Rs.16 lakhs was allegedly given back to the brother of the informant. The said amount was seized during the investigation and was given under orders of the court.

8. There are statements of even other persons related

to the accused persons. The statements of these witnesses also show that accused No.1 had come to his house alongwith bag containing cash and it was kept in the house.

9. This court finds that material which is collected and the statements recorded during the investigation is sufficient enough to proceed against the applicant.

10. This court finds that learned Sessions Court has rightly considered all the aspects involved in the matter and has rightly rejected the application for the discharge. This court does not find any perversity in the order. No ground is made out to interfere with the order passed by the learned Sessions Judge. Therefore, present application deserves to be dismissed. Hence, the following order.

ORDER

a] The criminal application stands dismissed.

[KISHORE C. SANT, J.]