

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2758 OF 2021

Chhaya w/o Prashant Deshmukh

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. S. S. Deshmukh, Advocate for the applicant.

Mrs. V. N. Patil-Jadhav, APP for the State.

Mr. P. M. Nagargoje, Advocate for respondent No. 2.

CORAM : SMT. ANUJA PRABHUDESSAI &

R. M. JOSHI, JJ.

DATE : 2nd FEBRUARY, 2023.

PER COURT : (Per R. M. Joshi, J.)

1. By consent, heard finally at the stage of admission.
2. This application is filed under Section 482 of the Code of Criminal Procedure for quashing First Information Report bearing No. 451/2021 registered with Pundliknagar Police Station, Aurangabad for the offences punishable under Sections 463A, 465, 467, 468, 471, 420, 120B, 405, 406 of the Indian Penal Code.

3. The record indicates that on the basis of an application filed by respondent No. 2 before the learned Judicial Magistrate First Class, Aurangabad, under Section 156(3) of the Code of Criminal Procedure, an order came to be passed directing registration of crime and pursuant to the said order, the First Information Report as noted hereinabove came to be registered. It is alleged by respondent No. 2 that he had initially made a complaint to the concerned police station and though there was a cognizable offence, no action was taken thereon. In paragraph No. 3 of the complaint, it is specifically averred by the complainant that accused persons came to his residence at Aurangabad from Yawatmal and obtained his signatures on some false documents.

4. Learned counsel for the applicant submits that the applicant, who is a Notary has attested documents executed by the complainant. The complainant has made false allegation only in respect of the indemnity bond dated 27th January, 2021 which the complainant finds to be against his interest. It is further pointed out that on the date of execution of the said document i.e. 27th January, 2021, another document was executed by Hirasingh Jadhav, complainant, and the said document is notarised by the present

applicant after the executant was duly identified by the advocate. Referring to the provisions of Notary Act and in particular Section 13, it is sought to be canvassed that a mechanism is provided in the said act in order to deal with the complaints against a Notary in respect of discharge of professional duties and in absence of any such complaint, criminal prosecution cannot sustain. It is submitted that as far as present applicant is concerned, her responsibility and function was to attest the document once the executant thereof is duly identified either by advocate or with any other document. Thus, according to him, even if the entire material on record is accepted as it is, no cognizable offence is made out against the present applicant. He placed reliance on judgment of this Court in the case of Mohammed Zulfekharuddin s/o Mohammed Alinuddin Siddiqui vs. The State of Maharashtra and others, 2014 ALL MR (Cri) 2961.

5. Learned counsel for respondent No. 2 and 1 earned APP submitted that though in the complaint an allegation is made with regard to obtaining signature on false document, statement recorded during the course of investigation indicates that the other documents are also fabricated by the accused persons. He drew attention of the Court to one of such documents claiming the same to be part of the

charge-sheet. According to him, all the accused, pursuant to the conspiracy, have committed offence and hence the present application does not deserve to be entertained.

6. It is well settled that the inherent powers under Section 482 of the Code of Criminal Procedure can be exercised by this Court when the allegations in the First Information Report and the entire material collected during the course of investigation fails to make out any cognizable offence against the accused. In this regard reference can be made to the judgment of the Hon'ble Apex Court in the case of State of Haryana and others vs. Bhajan Lal and others, 1992 Supp. (1) Supreme Court Cases 335, wherein guidelines/illustrations are laid down, as to the circumstances in which such powers are exercised.

7. In order to appreciate the rival contentions, this Court needs to consider as to whether prima facie the material collected during the course of investigation discloses commission of offences under Sections 405, 406, 420, 463A, 465, 467, 468, 471, 120B of the Indian Penal Code. In order to attract Section 405 of the Indian Penal Code, it must be shown that the accused was entrusted with

the property or had any dominion over the property and accused has dishonestly misappropriated or converted to their own use of such property.

8. With regard to offence under Section 420 of the Indian Penal Code, the essential ingredients of Section 415 of the Indian Penal Code have to be satisfied. Section 415 of the Indian Penal Code reads thus :

415. Cheating - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to "cheat".

9. For the purpose of attracting offences punishable under Sections 465, 468, 471 of the Indian Penal Code, there must be "forgery" within meaning of Section 463 of the Indian Penal Code. There has to be allegation of making false document, with intent to

cause damage or injury to any person and that there is use of such document as genuine or with knowledge or reasonable belief on the part of the person using the said document to be forged one.

10. A perusal of complaint made before the Judicial Magistrate First Class, Aurangabad shows that the only allegation against the applicant is that she along with co-accused came to Aurangabad to his house and obtained his signature on a false document by mis-representation. The supplementary statement recorded during investigation also does not show any other allegation against the present applicant. Even order dated 30th October, 2021 passed by the Magistrate in Criminal Misc. Application No. 3710/2021 discloses that the allegation against applicant is that she notarised the document without paying due attention. Though it is vaguely stated that all accused by mis-representing the complainant have obtained his signature, there is nothing on record to indicate that applicant was in collusion with co-accused or beneficiary by bringing into existence any document. Admittedly, the executant of document is identified by an Advocate. We do not find any material on record to indicate any conspiracy by accused, except vague contention of respondent No. 2.

11. The present applicant being Notary was responsible for attestation of the document after ascertaining the identity of the executant. It is not in dispute that the document in question is attested only after due identification of the executant by advocate. We do not find any substance in the contention of learned counsel for respondent No. 2 that even after such identification the applicant was further required to ascertain identity of the executant. Once the necessary precaution is taken by the applicant in the capacity of Notary before attesting or affirming the document, by no stretch of imagination she could be alleged to have even failed in discharge of her professional duties much less having committed any cognizable offence. The act alleged against applicant is in purported discharge of her function as Notary and hence by virtue of Section 13 of the Notaries Act no Court could take cognizance of any offence committed by a Notary in purported exercise of her functions save upon complaint by Competent Authority.

12. In our considered view, appreciation of entire material on record do not indicate commission of any cognizable offence on the part of the present applicant. The present case therefore squarely falls under the illustrations 1 and 3 laid down by the Hon'ble Apex

Court in the case of State of Haryana and others vs. Bhajan Lal and others, 1992 Supp.(1) Supreme Court Cases 335.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

* * *

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

13. To call upon applicant to undergo criminal process would be sheer abuse of process of law. Hence, application stands allowed in terms of prayer clause 'A'. Accordingly, First Information Report No. 451/2021 451/2021 registered with Pundliknagar Police Station, Aurangabad for the offences punishable under Sections 463A, 465, 467, 468, 471, 420, 120B, 405, 406 of the Indian Penal Code is quashed, qua the applicant.

(R. M. JOSHI)
Judge

(SMT. ANUJA PRABHUDESSAI)
Judge

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