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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.191 OF 2023

Suhas Dwarkanath Kande ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr. Niteen Pradhan with Ms. Shubhada Khot for the applicant.

Mr. A.R. Patil, APP for respondent/State.

Mr. Nilesh Mainkar, Sr.P.I., Gangapur Police Station, is present.

CORAM : AMIT BORKAR, J.

DATED : APRIL 10, 2023

P.C.:

1. The criminal application is directed against the legality and validity of the order dated 7th January 2023 passed by the learned Special Judge (MP/MLA) and Additional Sessions Judge, Nashik, in Criminal Revision No.78 of 2021 confirming judgment and order dated 12th March 2021 passed by the learned Special Judge, Judicial Magistrate First Class, Nashik rejecting discharge application below Exhibit 11 in Regular Criminal Case No.1054 of 2017 arising out of CR No.I-219 of 2016 registered with Gangapur Police Station, Nashik.

2. The case of the prosecution is that on 18th December 2015, the applicant, in connivance with other accused persons got, executed a sale deed of a plot owned by the mother of the complainant by preparing a forged PAN Card and Aadhar Card and other documents. They opened a bank account by using a forged document and, for getting wrongful gain, impersonated the mother of the complainant by portraying accused No.1 as the mother of the complainant and transferred it in favour of accused No.7, who is a worker of applicant. The applicant and others were charged with offences under Sections 420, 467, 468, 471, 406, 120-B, and 34 of the Indian Penal Code, 1860.

3. Charge-sheet comprises (i) a statement of accused No.1 stating that the driver of the vehicle that carried her to the Registrar's office for execution of the disputed document is the applicant's brother-in-law. (ii) CDR showing calls of the applicant to one of the accused.

4. The applicant filed a discharge application Session Judge which came to be rejected by the impugned order.

5. The applicant has, therefore, filed a present application challenging order of Sessions Court.

6. Learned advocate for the applicant submitted that the charge sheet does not make out offences under Sections 420, 467, 468, 471, 406, 120-B, and 34 of the Indian Penal Code, 1860. The prosecution has not established a prima facie case for proceeding against the applicant to frame charges for the said offences. Learned Sessions Judge has committed an error in rejecting the application for discharge, although there was no evidence to prosecute the applicant for the alleged offences. No specific role was assigned to the applicant in the charge sheet. There is only one call made by the applicant to the accused. Witnesses have not attributed any overt act to the applicant connecting him to the alleged offences. Considering the statement of witnesses and other material on record, there is no evidence on record to implicate the applicant; therefore, the charge under Sections 420, 467, 468, 471, 406, 120-B, and 34 of the Indian Penal Code, 1860 was groundless.

7. Learned APP for the respondent/State supported the impugned order. He submitted that at the stage of framing of charge, it is not expected that the Trial Court should enter into a mini-trial. The Court is required to see that a prima facie case is made out to proceed against the accused for framing charges. It is submitted that the statement of accused No.1 clearly shows the applicant's involvement in the said crime. CDR produced on record indicates that the applicant had called one of the accused at the time of the offence. He, therefore, prayed for the dismissal of the application.

8. I have perused the FIR and material in the form of a charge sheet produced on record.

9. It is well-settled law that at the time of framing of charge, the Court has to see to whether or not the complaint and the material collected by police during the course of the investigation, which includes the statements recorded under Section 161 of the Code of Criminal Procedure, 1973 as well as documents seized by the police, taken at their face value or accepted as they indicate the constitution of offences alleged and make out a case to proceed further against the accused by framing charge. It is only when the Court, upon consideration of the record of the case and the documents submitted in addition to that and after hearing the submissions of the accused and the prosecution, forms an opinion that there are no sufficient grounds for proceeding against the accused, the Court would be under a duty to discharge the accused for the reasons recorded in writing, as provided in Section 227 of the Code of Criminal Procedure, 1973 the expression "sufficient ground" used in Section 227 of the Code of Criminal Procedure, 1973 suggest that the Court should not examine the material before it from the viewpoint as to whether the trial will end in conviction or acquittal. Instead, the perspective of such examination should be whether the material is of such a nature as to enable the Court to form a reasonable belief that something against the accused would warrant his trial for the offences alleged against him. But if two views are possible and one gives rise to suspicion only as distinct from grave suspicion, the trial Court would be within its power to discharge the accused. A useful reference in this regard may be made to the case of **Vijayan Vs. State of Kerala,** reported in 2010(2) SCC 398.

10. A perusal of the charge sheet demonstrates that the applicant has been charged with offences under Sections 420, 467, 468, 471, 406, 120-B, and 34 of the Indian Penal Code, 1860. A careful reading of the charge sheet shows that no specific role has been attributed to the applicant which fulfils ingredients of offences alleged against the applicant. The Trial Court rejected the discharge application holding that circumstantial evidence on record indicates that accused No.2 is a worker of the applicant. The applicant is the vice president of the Bank. Accused No.3 is the Manager of the said Bank. Accused No.5 is the driver of the applicant. The applicant has not denied that the applicant told accused No.1 to open a bank account in his bank. The Trial Court has recorded a finding that prima-facie accused No.3 illegally helped accused No.1 to open a bank account. The Trial Court has also recorded a finding that between 17/12/2015 to 19/12/2015, there was a conversation between accused No.2 and the applicant on a cell phone, which is demonstrated by CDR and SDR placed on record. The Revisional Court dismissed the Revision based on CDRs of the accused, statements under Section 164 of star witness Bharat Sudam Shikre and accused No.3 opened a bank account per the applicant's direction.

11. On perusal of the material on record, in my opinion, CDRs indicate calls from cell No.9881199786 on 18th December 2015 at 12.22,14:10,16.57 to accused no. 5. The statement of accused no. 1 is to the effect that she was carried in the vehicle after the completion of execution of the disputed document; Co-accused pointed towards the driver of the car being applicant's brother-in-law. Applicant has criminal background. Except for the aforesaid material, there is no evidence on record to attribute any role to the applicant.

12. In my opinion, three calls, referred to in call detail records, can, at the most, raise suspicion over the *accused No.7/*applicant; however, it is not enough to raise grave suspicion against the applicant. The statement of accused no.1 indicating the presence of the applicant's brother-in-law in the vehicle used to transport her to the Registrar's office is insufficient to raise grave suspicion of offence. On perusal of the statements of other witnesses, no specific role is attributed to the applicant. I am, therefore, satisfied that in the absence of any role specifically assigned against the applicant or any material prima facie material demonstrating sufficient ground for proceeding against the applicant in respect of offences alleged against him. No material is on record, except CDR and statement of accused no.1, to create grave suspicion against the applicant to incriminate him. If taken at its face value, the entire material found against the applicant does not disclose the existence of all ingredients constituting alleged offences.

13. The result is that there is no sufficient ground for proceeding against the applicant for the offences specifically referred against him in the impugned order.

14. Courts below, as it is seen, have completely ignored this aspect of the case, which is fundamental to the exercise of jurisdiction under Section 227 of the Code of Criminal Procedure, 1973 and thus committed illegality in rejecting the application for discharge.

15. In the foregoing discussion following order is passed:-

(a) The Criminal Application 191 of 2023 is allowed.

(b) The impugned order dated 7th January 2023 passed by the learned Special Judge (MP/MLA) and Additional Sessions Judge, Nashik, in Criminal Revision No.78 of 2021 confirming judgment and order dated 12th March 2021 passed by the learned Special Judge, Judicial Magistrate First Class, Nashik rejecting discharge application of applicant below Exhibit 11 in Regular Criminal Case No.1054 of 2017 arising out of CR No.I-219 of 2016 registered with Gangapur Police Station, Nashik is hereby quashed and set aside.

(c) The applicant/*accused No.7* is discharged from Regular Criminal Case No. 1054 of 2017 pending on the file of learned Special Judge, Judicial Magistrate First Class, Nashik, arising out of CR No.I-219 of 2016 registered with Gangapur Police Station, Nashik.

(AMIT BORKAR, J.)

Note :- The order is modified as per order dated 19th April, 2023 and the corrections in the paragraph 12 and 15(c) are corrected which shows in italicize)