

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.109 OF 2023

Zakir Yusuf Shaikh .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Divakar Rai with Mr.Aditya Rai, Mr.Nitin K. Rai, Mr.Raj Tamhankar, Mr.Mayur Sosa and Mr.Vayukumar Tiwari i/b Mr.Ramchandra Rane for the Applicant.

Mr.Y.M.Nakhwa, A.P.P. for the State/Respondent.

PSI Suraj Jarag attached to BKC Police Station, present.

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CORAM: BHARATI DANGRE, J.
DATED : 18th OCTOBER, 2023

P.C:-

1. The present Revision Application calls in question the order passed by the Additional Sessions Judge, Greater Bombay, passed 09/05/2022 below Exh.29, being the Discharge Application preferred by the Applicant, on the ground that there is no material available against him, which could be said to be sufficient to take him for trial in C.R.No. 134 of 2017 registered with BKC Police Station, invoking Sections 370, 419, 420, 465, 468, 471 read with 120-B of the Indian Penal Code (for short, “the IPC”)

2. The aforesaid C.R. came to be registered on the letter being forwarded by the Complainant, Mr.Greg Paladino, the Consulate

General of the United States of America, where he narrated that one Mrs.Nirmala Qureshi has applied for U.S. visa at the U.S.Consulate General and she also submitted visa applications for her two children, Sara and Adiv, but as per the police, since the children were below 14 years of age, they were not required to remain present for the interview. Nirmala also made reference to U.S. visa in favour of her husband, Azhar, but database revealed that his visa was already revoked for material misrepresentation. The Consulate General indicated that the two children of Nirmala, Sara and Adiv, in fact never travelled to U.S. and the necessary evidence to that effect has been collated, but it is revealed that lady by name Nirmala (aka Farida) Qureshi transported one unknown boy and girl to U.S., by making use of the passport of her children and, thereafter, returned alone India and these two children are illegally residing in U.S. The U.S. Consulate requested BKC police station to invoke the investigation.

This is how the C.R. came to be registered.

3. The present Applicant is arraigned as Accused No.3 and on completion of investigation, the charge-sheet is filed.

I have perused the charge-sheet placed on record, which has attributed specific role to the Applicant, being of procuring flight tickets for Nirmala and her children. The accusation is levelled against Nirmala of forging the immigration process and the necessary documents and creating an impression that the children flying with her were her own children, who were allotted visa and that is how misled the Immigration Authorities.

4. As far as the present Applicant is concerned, his role is limited to booking of tickets and the statement of one Tabrej Abdulla Shaikh, who owns a company, which deals in Air ticketing and visa makes it clear that he was acquainted with the Applicant, as the Passport Agent and he requested him to book tickets of the passengers, whose details were given to him somewhere in the month of January 2017, for her travel to America alongwith her two children, Sara and Adiv. At the instance of the Applicant, Tabrej booked the tickets on two to three occasions and an amount due and payable for the same, was also accepted by him. He has given the details of the tickets booked for Nirmala Qureshi and her children Sara and Adiv from Delhi to Frankfurt, from Frankfurt to Orlando as well as another set of ticket from New York to Frankfurt and Frankfurt to Delhi. As per this witness, Zakir intimated him that the return tickets should be cancelled and accordingly, on cancelling the tickets, he prepared a credit note.

I do not think that mere cancellation of the return ticket is suspicious circumstance, as it is possible that the passenger might make a request to cancel the ticket of a particular date, but that itself would not amount to an offence, if upon such request, the ticket is cancelled and in fact, the cancellation is by Tabrej, and according to him, it is at the instance of the present Applicant.

5. In absence of any material that the Applicant had knowledge about the conspiracy and of transporting the two children to America by the main accused, I do not think that he can be held responsible for committing an offence under Section 120-B of the IPC, as it is alleged that conspiracy was hatched for

transporting the minor children and the concerned C.R. has invoked Sections 419, 420, 465, 468, 471 alongwith Section 370 of the IPC against the main accused-Nirmala Qureshi.

As far as the role attributed to the present Applicant in the charge-sheet is concerned, it does not in any manner indicated his involvement and the knowledge on his part about the offence being committed.

I have not taken into consideration the defence of the Applicant, as the contents of the charge-sheet and the material collected by the prosecution speak for itself and, hence, in absence of the sufficiency of the material, to take him for trial, which would ultimately be an empty formality, I deem it appropriate to discharge him from the case.

The impugned order, which has failed to consider this aspect and his involvement in the conspiracy as alleged, is, therefore, liable to be quashed and set aside.

The Applicant stands discharged from the offences levelled against him in the charge-sheet, which is filed in Sessions Case No.545 of 2017 arising out of C.R.No.134 of 2017, registered with BKC Police Station.

The Revision Application stands allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)