

Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1415 OF 2022

Madhavi Balasaheb Potdar ... Applicant
V/s.
State of Maharashtra ... Respondent

Mr. U.P. Warunjikar with Sumit Kate for the Applicant.

Mr. Arfan Sait, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 30, 2023

P.C.:

1. Challenge in this application is to the order dated 19th July, 2019 passed by Chief Judicial Magistrate, Kolhapur rejecting application for discharge filed by the applicant for the offences punishable under Sections 420, 468, 471, 34 of the Indian Penal Code, 1860.

2. The case of prosecution as reflected from the material in the charge sheet is as under :-

The applicant is accused No.5. According to prosecution between 10th November, 2008 to 4th February, 2012, the accused No.1 in connivance with other accused promised employment in Shree. Swami Vivekanand Shikshan Sanstha, Kolhapur to the post of clerk and peon and accepted amount of Rs. 67,50,000/- from the informant and witnesses. The accused No.2 accepted various amounts from the witnesses and accused No.1 assisted him.

Accused No.3 assisted accused No.1 by creating forged identity cards for B.sc Computer course to withdraw salary in a premises owned by him. Accused No.4 accepted money from the witnesses on behalf of accused No.1 in furtherance of promise of employment to the post of clerk and peon. The allegations against the present applicant is that she is sister of accused No.1 and is also advocate. She was present in the office when other accused accepted the amounts referred above.

3. After filing of charge-sheet, the applicant filed an application for discharge which has been rejected by the impugned order. On perusal of the order it appears that the Chief Judicial Magistrate was considering joint application for discharge filed by the accused. On perusal of the order indicates that the Chief Judicial Magistrate has not scrutinized individual role of the applicant. Based on over all material on record, the Chief Judicial Magistrate recorded a finding that the evidence on record is sufficient to proceed against the accused persons.

4. Mr. U.P. Warunjikar learned advocate for the applicant submitted that except presence of the applicant while alleged offence was being committed, there is no material on record to implicate the applicant. He invited my attention to the material in the charge-sheet and the statements of witnesses. He, therefore, submitted that even if entire material against the applicant is accepted, it does not travel beyond the statement in the summary of charge-sheet that the applicant was present when the alleged offence of accepting the amount and other allegations were committed.

5. Learned APP for the State opposed the application and he submitted that material on record is sufficient to raise the grave suspicion against the applicant that she participated in the offences alleged. He therefore prayed for rejection of discharge application.

6. With the assistance of the advocates I have perused scrutinized material in the charge-sheet. On perusal of entire material in the charge-sheet, in my opinion, the only material against the the applicant is that she was present in the office when the offence as alleged was being committed. Except this, there is absolutely no material on record to implicate the applicant for the offences alleged against the accused persons.

7. The offences alleged against the applicant are under Sections 420, 468, 471 and 34 of the Indian Penal Code, 1860. The material on record does not indicate that the applicant had promised to the informant or the witnesses which at the inception of transaction was false. The essential ingredients of offence under Sections 468 and 471 of the Indian Penal Code, 180 are also not made as the material on record indicates limited role of presence of applicant at the time of alleged offence. Therefore, in my opinion, the Trial Court was not justified in rejecting application of the applicant.

8. On perusal of material on record, I am satisfied that there is no ground to proceed against the applicant for the offences under Sections 420, 468, 471, 34 of the Indian Penal Code, 1860 is made out. I, therefore, pass following order :-

(I) The Judgment and Order dated 19th July, 2019 passed by Chief Judicial Magistrate, Kolhapur below

Exhibit-110 in RCC No.1 of 2023 is quashed and set aside.

(ii) The applicant stands discharged for offences punishable under Sections 420, 468, 471, 34 of the Indian Penal Code, 1860 in RCC No. 1 of 2023 in pursuance of First Information Report No. 26 of 2012 alleged with Shahapur Police Station, Kolhapur.

9. The Criminal Application stands disposed of in the above terms. No costs.

(AMIT BORKAR, J.)