

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1567 OF 2022

Jesus @ Pranjal s/o Ramesh Waghale,
aged about 36 years, Occ. Doctor, R/o
Flat No. 301, Orange Blossom, Omka
Nagar, Nagpur, Presently residing at
California City Los Angeles 245 W
Lorraine st. Glendale CA 91202, Through
its Power of Attorney Shir. Dr. Ramesh
S/o Natthuji Waghale, aged about 72
years, Occ. Doctor, R/o Flat No.301,
Orange Blossom, Omkar Nagar, Nagpur.

... APPLICANT

VERSUS

1. State of Maharashtra, through Police
Station Officer, Police Station,
Belatroadi, Nagpur.
2. Chandrakant s/o Mahdeo Yadav,
aged about 57 years, Occ. Service,
Inspector Officer in Charge, Police
Station, Belatroadi, R/o C/o Police
Station Belatroadi, Nagpur.

... NON-APPLICANTS

Shri Amol Shripad Deshpande, Advocate for the applicant.
Shri S.S. Doifode, Additional Public Prosecutor for the non-
applicant/State.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 02/03/2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.**

2. The matter is taken up for final hearing by consent of learned Counsel appearing for the respective parties.

3. Unusual fact emerges in this application for quashing the First Information Report (FIR) in Crime No. 97 of 2022 registered with the Beltarodi Police Station, Nagpur City for the offence punishable under Sections 419, 170, 177, 182 and 189 of the Indian Penal Code (IPC) and related charge-sheet bearing R.C.C. No.152 of 2022.

4. The crime was registered at the instance of the report lodged by the Police Inspector Chandrakant Yadav attached to the Beltarodi Police Station. The facts in brief are that, the informant Police Inspector was entrusted with the investigation of Crime No.474 of 2021 registered against one Priya Vairagade. On 08.03.2022, the applicant (accused) went to the Police Station and introduced himself as the Secretary of IAS Officer Arvind Shrivastav attached to the

Secretariate Prime Minister's Office (PM Office), New Delhi. He met the informant in connection with Crime No.474 of 2021 registered against one Kamini @ Priya Vairagade. The accused by posing himself as a Secretary of high ranking officer had asked the informant to be soft against Priya Vairagade in the investigation of Crime No.474 of 2021. The accused stated that the investigation shall be carried in the manner so as to exclude Priya Vairagade from the crime. He has also stated about his connections with the PM Office, New Delhi and threatened that he can do anything against the police.

5. The informant stated that, later on, he received a phone-call from the office of the Assistant Police Commissioner, Ajani Division, Nagpur informing the same thing. It was conveyed that the accused also went to the Commissionerate Office and asked them to see that Priya Vairagade, who is his relative, shall be exonerated from crime. Similarly, on 20.01.2022, the informant received telephonic message from the Joint Police Commissioner, Zone-4 Nagpur, where also the accused went and posing himself as a Secretary attached to the PM Office, New Delhi, asked to delete Priya Vairagade from the crime.

6. On preliminary inquiry, it was learnt that the accused namely Jesus @ Pranjal Waghale was neither in government service nor

does have any connection with the PM Office, New Delhi. The Police realized that the accused has tried to influence by personation. The Police tried to contact accused, but he did not respond, therefore, the report.

7. Learned Counsel for the applicant submitted that the accused has no concern with Priya Vairagade. The accused is medical practitioner settled abroad. It has been submitted that the contents of the FIR even if taken at their face value and accepted in their entirety, do not *prima facie* constitute the offences charged. The essential ingredients to constitute the offence are missing.

8. Learned Counsel for the applicant initially submitted that the offence of cheating by personation in terms of Section 419 of the Indian penal Code would not attract at all. According to him, no loss or damage has been caused, and therefore, the essential ingredients are absent. The reading of FIR *prima facie* indicates that the accused has personated by posing himself to be in the service of PM Office, New Delhi. As regards to aspect of cheating is concerned, the allegation *prima facie* discloses that he has deceived the informant and dishonestly induced him for not to carry proper and fair investigation. Rather induced the informant omit to investigate, which he would not

have been done otherwise. It is a matter of trial to infer whether on account of personation there is likelihood to cause damage or harm to the reputation of the informant by way of misdirecting investigation.

9. By placing reliance on the decision of the Supreme Court in case of *Ram Jas vs. State of U.P 1970(2) SCC 740*, it is submitted that, to constitute the offence of cheating there must be inducement to deliver any property. In the said decision, it was a case of wrong identification before the Oath Commissioner, who was not induced to deliver any property. In that context, the offence was not held to be proved. Basically it is a factual aspect to be decided on the basis of emerging facts of each case.

10. Learned Counsel for the applicant would submit that the contents of the FIR does not make out an offence of personating a public servant punishable under Section 170 of the IPC. To substantiate said contention, reliance is placed on the decision of the Kerala High Court in case of *K.S. Premachandra Kurup vs. State of Kerala 2013 CRI.L.J. 1465*. In said case after retirement, the accused used his name as retired IAS Officer for which the crime was registered. It was observed that the accused has merely used such nomenclature, but did not attempted to do any act under colour of such office and therefore,

no offence. Undoubtedly, to constitute the offence under Section 170 of the IPC firstly, a person must pretend to hold a particular office as a public servant, and secondly, under such assumed character must do or attempt to do an act under the color of such office. In case at hand, the informant has stated that the accused under the color of office has tried to pressurize the Police for diverting the course of investigation so as to exclude the then suspect. Therefore, being distinct facts, the said decision is of no help.

11. On the same line, the applicant further relied on the decision of the Punjab and Haryana High Court in case of ***Ajitinder Singh vs. State of Punjab 2000 CRI.L.J.1827***. In said decision also, though particular character was assumed, but there was no attempt to commit any act. Thus, for the similar reasons, this decision would not assist the applicant in any manner. The reliance is also placed on the decision of the Calcutta High Court in case of ***A.K. Majumdar vs. The State 1978 SCC OnLine Cal 154***. Wherein also a person assuming false character has merely attested the documents. This being distinct facts, above decision would not assist.

12. Learned Counsel for the applicant would submit that the Police Inspector of Beltarodi Police Station is the informant as well as

the Investigating Officer and therefore, it was not a fair trial. Learned A.P.P. was quick enough to respond that another Officer Assistant Police Inspector Anil Meshram has investigated the matter and filed the charge-sheet and thus, the submission is factually incorrect. At this juncture, the applicant took one other stand that though the Investigating Officer is different, however he was subordinate to the informant (Police Inspector) and therefore, it is not a fair trial. For this purpose, he relied on the decision of the Supreme Court in case of ***Mohan Lal vs. State of Punjab (2018) 17 SCC 627***. In said case, it has been observed that as a matter of law, the informant and the investigator must not be the same person, as it is against the basic principles of fair trial. Herein it is not a case that the informant himself is an Investigation Officer. The applicant is unable to point out any provision or material to support his contention that merely because the informant is a superior officer of the Investigating Officer that *ipso facto* amounts to unfair trial. Therefore, the said contention does not hold any water.

13. Learned Counsel for the applicant relied on the decision of the Supreme Court in case of ***Prof. R.K. Vijayasathya and anr. vs. Sudha Seetharam and anr. (2019) 16 SCC 739*** to content that in absence of *prima facie* material, the proceeding can be quashed by

invoking inherent powers of this Court. In the said decision itself it has been observed that, the complaint has to be examined as a whole, but cannot examine the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material is warranted.

14. The Supreme Court in reported case of ***State of Haryana vs. Bhajan Lal AIR 1992 SC 604*** has laid down the guiding principles on the basis of which inherent powers are to be invoked. The First Information Report *prima facie* constitutes the charged offences. Not only the accused personated to the informant (Police Inspector) but also met different higher police authorities and by way of personation tried to influence the police machinery. The charge-sheet bears a statement of the driver of the accused, which supports the informant's contention that the accused went to all concerned police authorities. It reveals from the police papers that one Sonali Vairagade was friend of the accused. In order to help to the sister of Sonali i.e. Priya vairagade, the accused appears to approach to the Police. It emerges that the act of accused of posing himself to be a high ranking officer attached to the PM Office, New Delhi and under said guise, tried to influence the Police Officers, is serious in nature.

15. Already investigation is culminated into filing of the charge-

sheet. *Prima facie*, triable case is made out. Though there is delay in lodging the First Information Report, it is a matter of appreciation at the time of trial. In view of above, no case is made out and therefore, the application stands rejected.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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