# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# BENCH AT AURANGABAD

## CRIMINAL APPLICATION NO. 770 OF 2022

Kailas Narayan Wallakatti .. Applicant

**Versus**

The State of Maharashtra and another .. Respondents

Shri R. R. Imale, Advocate for the Applicant.
Shri V. K. Kotecha, A.P.P. for the Respondent No. 1.
Shri Ashish V. Sonawane, Advocate h/f Shri V. D. Sonawane, Advocate for the Respondent No. 2.

**CORAM : MANGESH S. PATIL AND SHAILESH P. BRAHME, JJ.**
**DATE : 04 MARCH 2024.**

**<u>FINAL ORDER</u> (*Per Shailesh P. Brahme, J.*) :-**

. Heard litigating sides finally with their consent at the admission stage.

2. The applicant is seeking quashment of offence bearing CR. No. 17/2019 of Sadar Bazar Police Station Jalna for the offence punishable U/Sec. 420, 409 r/w Section 34 of the Indian Penal Code and consequent proceedings of R.C.C. No. 326 of 2019 pending before the Judicial Magistrate First Class, Jalna.

3. The respondent No. 2 is the informant of the report submitted to the police station on 05.01.2019. The applicant's name does not figure in the report. It is against five persons who are alleged to have extracted an amount of Rs. 16,50,000/- from

the informant under the pretext of providing job to the nephews and friends of the informant.

4. It is alleged by the informant that co-accused Ankush Kamble promised informant to provide job of Class IV employee in Public Works Department, Jalna. He has alleged to have demanded Rs. 6,00,000/- each to be paid at the different stages of the recruitment. Accordingly informant and his nephews paid various amounts by cash and even by issuing cheques from 16.03.2016 to 21.03.2017. Finding that informant was being deceived, accused No. 1/Ankush Kamble was approached for refund. He issued a cheque for Rs. 15,50,000/-, which was dishonoured.

5. During the course of investigation supplementary statement of the informant was recorded which discloses that at the relevant time applicant was working as Office Superintendent at Jalna. Investigation was completed, which culminated in R.C.C. No. 326 of 2019 against five persons including the applicant.

6. The learned counsel for the applicant submits that he was not working in the office concerned when informant was for the first time promised by main perpetrator Ankush Kamble in November 2015. The collection of money was during 17.03.2016 to 21.03.2017, when applicant was not posted at Jalna. He was promoted and resumed charge from 01.02.2018 of the concerned office at Jalna. It is therefore submitted that applicant is not

concerned with the overt act of co-accused Ankush of inducement and collection of money.

7. Learned counsel would submit that there is no incriminating material against him to show that he was instrumental in inducing the informant for parting with money. No case can be made out from entire charge sheet against him. It would be an abuse of process of law to proceed against him.

8. Learned Assistant Public Prosecutor and the learned counsel for the respondent No. 2 repel the submissions of the applicant. They would submit that applicant and co-accused acted in collusion. Involvement of the applicant could be gathered during the course of trial. They would refer to supplementary statements and the statements of Akash, Tejas, Vivek and Shivraj to show involvement of the applicant.

9. We have considered the submissions of the parties. First information report does not spell out any role or allegations against the applicant. The applicant is implicated due to the supplementary statement of the informant recorded on 07.01.2019. The statements of Akash, Tejas and Vivek indicate that Ankush Kamble and Adinath Jain represented the informant and the job seekers that amount was required to be paid to the applicant and other two officers. Thus the amount was collected by Ankush. But there is no material or even allegations about the applicant having received the money.

10. We do not find any material on record to show that applicant has either demanded money to the informant or other victims. There is nothing on record to show that any promise was given by the applicant or any transaction occurred in his presence. It is further noticed that there is nothing to show payment of amount to the applicant directly. As against that, incriminating role appears to be played by co-accused Ankush Kamble and Adinath Jain. In fact, in order to refund the money Ankush had issued the cheque to the informant for the entire amount.

11. Our attention is drawn to official correspondence dated 01.02.2018 and 06.02.2018 which indicate that applicant joined office at Jalna on 01.02.2018. F.I.R. shows that informant was introduced to co-accused Ankush Kamble in November 2015, when he appears to have induced informant for parting with money for providing job to the victims. It further reveals that payment was made to Ankush Kamble partly in cash and partly by cheque from 17.03.2016 to 31.03.2017. The applicant was not working in the office concerned at that time. The letters produced by the applicant at Exhibit – A have not been disputed by the respondents. We are of the considered view that there is no involvement of the applicant.

12. Just because he was in office at the time of lodging report on 05.01.2019, he is being implicated in the offence. We have no hesitation to hold that it is an abuse of process of law to proceed against the applicant. We find that present case is squarely

covered by the ratio laid down by the Supreme Court in the matter of <u>State of Haryana Vs. Bhajanlal</u> reported in ***1992 SCC (CRI) 426,*** as the allegations are inherently improbable.

12. For the reasons mentioned above, we are inclined to allow the application. We therefore pass following order.

**O R D E R**

I. The criminal application is allowed in terms of prayer clause "B".

II. The criminal application is disposed of.

**[ SHAILESH P. BRAHME, J. ]** **[ MANGESH S. PATIL, J. ]**

*bsb/March 24*