IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD CRIMINAL APPLICATION NO.1277 OF 2022

Shivaji Maharu Hatkar
Age: 53 Years, Occu: Service,
R/o. Plot No.31, Gut No.412,
Nehru Nagar, Pachora Road,
Near Mehrun Talav, Jalgaon,
Tq. & Dist. Jalgaon. ..Applicant

Versus

1. The State of Maharashtra,
Through its, Deopur Police Station,
Dhule, Tq. & Dist. Dhule.

2. Sanjay Panditrao Davulkar,
Age: 49 Years, Occu: Nil,
R/o. Plot No.47, Utkarsh Colony,
Sakri Road, Dhule ..Respondents

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Mr. V. B. Patil, Advocate for the Applicant.
Mr. V. K. Kotecha, APP for Respondent No.1.
Respondent No.2 is served.

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CORAM : SMT. VIBHA KANKANWADI AND S. G. CHAPALGAONKAR, JJ.
DATED : 20th SEPTEMBER, 2024.

ORDER (Per S. G. Chapalgaonkar, J):-

1. The applicant has approached this Court under Section 482 of the Criminal Procedure Code thereby praying to quash and set aside FIR in Crime No.2/2005 registered with Deopur Police Station, Dist. Dhule for offences punishable under Sections 420, 468, 471 r/w 34 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act as well as consequential criminal proceeding in R.C.C. No.192/2008 pending before Chief Judicial Magistrate, Dhule.

2. The respondent no.2 herein lodged report dated 01.01.2005 with Deopur Police Station, Dhule. In nutshell FIR states that

accused persons extracted huge amount from unemployed youths, who were in search of job under the pretext of providing employment on different posts in the institution namely AIDS Research Centre, Deopur. The accused person like applicant herein acted as an agent and extracted huge amount from youths and provided appointment orders on different posts. After joining duties in pursuance of such appointment orders, they were made to work for short duration, no salaries were paid during the period of employment and lastly, business of AIDS Research Centre was closed. The victims have been defrauded for the amount extracted under the pretext of providing employments. The FIR stats that in all 900 to 1000 unemployed persons were given temporary orders of appointment.

3. In pursuance of aforesaid report, Crime No.2/2005 came to be registered for offences punishable under Sections 420 r/w 34 of the Indian Penal Code. Finally charge-sheet has been filed for offences punishable under Section 420, 468, 471 r/w 34 of the Indian Penal Code. Further investigation was also carried and supplementary charge-sheets have been filed. Although applicant is not named in the FIR, during the course of investigation when statements of victims were recorded, it was revealed that applicant induced some them and extracted amount of Rs.1,50,000/- under the pretext of providing employment at AIDS Research Centre.

4. Mr. Patil, learned Advocate appearing for the applicant submits that FIR is registered in the year 2005 and applicant has been made accused later in point of time on the basis of so called statements of witnesses. He was initially arrested on 23.09.2016. and remanded to police custody and finally released on bail. According to Mr. Patil, in pursuance FIR lodged in year 2005 the

applicant was arrested in the year 2016, which clearly depicts that he has been falsely implicated in aforesaid crime.

5. The applicant, in collusion with main accused Dinesh, alleged to have received Rs.11,40,000/- from victims namely Manohar, Satish, Prabhakar, Ravindar, Anil, Hemraj, Dhananjay and issued orders with forged signature of Dinesh. According to Mr. Patil, the applicant has been falsely implicated only on the basis of statements of so called victims. There is absolutely no material by which role of the applicant can be established. Mr. Patil would submit that applicant was unconcerned with AIDS Research Centre. However, his name has been maliciously implicated. Mr. Patil further submit that in the year 2005 one more offence was registered against applicant with similar allegation, but after trial he has been acquitted. He would, therefore, urge that FIR and consequential criminal proceeding may kindly be quashed and set aside.

6. Per contra, Mr. Kotecha, learned APP appearing for the respondent-State vehemently opposes the prayers in the application and submits that material in the charge-sheet is sufficient to make out triable case against applicant. The applicant cheated innocent unemployed persons and issued false appointment orders thereby extracted huge amount of Rs.11,40,000/- in connivance with other accused persons.

7. We have considered submissions advanced on behalf of learned advocates appearing for respective parties. We have perused the contents of the FIR and charge-sheet. It is trite that, inherent powers of this Court under Section 482 of the Criminal Procedure Code are required to be sparingly exercised in deserving

cases, only when such exercise is required to prevent abuse of process of law. The Supreme Court of India in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***[1] has laid down certain parameters when such powers can be utilized with a caution note that exercise shall be in the deserving cases only. The instances for exercise of such jurisdiction are crystallized by the Supreme Court of India, which reads as under:

> *"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
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> > *1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
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> > *2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
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> > *3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
> >
> > *4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

1 **AIR 1992 SC 604.**

> *5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
>
> *6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
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> *7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

8. In light of aforesaid legal position, we have examined contents of FIR and charge-sheet. It is true that name of the applicant is not appearing in the FIR. However, during the course of investigation, statements of various persons who were victimized by accused persons are recorded. It is revealed that under the pretext of providing employment at AIDS Research Centre, the huge amounts have been extracted and false appointment orders were issued. It appears that, previously applicant was prosecuted for similar allegations and he has been acquitted after trial.

9. In present case, the statement of witness namely Devidas Shukla has been recorded on 03.12.2012, wherein he has clearly stated that applicant extracted amount of Rs.1,50,000/- from him under the pretext that he will provide employment to his son namely Satish as Computer Operator at AIDS Research Centre, Dhule. From the contents of the FIR it is discernible that it is a case of big scam and large number of unemployed youths, who were seeking suitable job have been defrauded and huge amount has

been extracted from them. In present case, applicant was arrested in the year 2016 and approached this Court in the year 2022. At this stage, we do not find any reason to invoke our inherent powers under Section 482 of the Criminal Procedure Code, particularly when statement of witness makes out triable case against applicant. Hence, we do not find any merit in the application and the same is rejected.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Devendra/September-2024