IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Application No. 1122 / 2020

1. Gangadevi Wd/o Dineshlal Jaiswal
2. Sarvesh s/o Dineshlal Jaiswal
3. Sachin s/o Dineshlal Jaiswal

All R/o Plot No.1/553, Gayatri Niwas,
Shastri Nagar, Selu, Dist. Parbhani. **…Applicants**

Versus

1. The State of Maharashtra
   Through Police Station Officer,
   Police Station Chandanzira,
   Jalna.

2. Vidya w/o Ramesh Munde **...Respondents**

...

Advocate for Applicants : Mr. Rupesh A. Jaiswal
APP for the Respondent No.1/State : Ms. S.S. Joshi
Advocate for Respondent No.2 : Mr. R.H. Hange

…

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.
RESERVED ON : 5 MARCH 2024
PRONOUNCED ON : 15 MARCH 2024

FINAL ORDER [Per Shailesh P. Brahme, J.] **:**

. Heard learned Counsel for both the sides finally at the admission stage.

2. The applicants are praying for quashment of FIR bearing C.R. No.654/2019 registered with CIDCO Police Station, Aurangabad for the offences punishable under Sections 420, 406, 507, 34 of the Indian Penal Code and consequential RCC No.1284/2020 pending before the Judicial Magistrate First Class, Aurangabad.

3. A report was submitted on 15.11.2019 by the respondent no.2/informant which is registered as impugned FIR against the applicants and Bahaddursingh Ramsingh Rajput. Co-accused Bahaddursingh has filed separate Criminal Application No.3961/2019. After investigation, charge-sheet has been filed which led to RCC No.1284/2020.

4. It is alleged that the informant was represented by co-accused Bahaddursingh that the husband of applicant no.1, Dineshlal Jaiswal was holding a licence – CLIII which was to be transferred. The consideration was fixed at Rs.47,00,000/-. The informant was induced to pay Rs.10,00,000/- from 13.10.2016 to 19.11.2016. Co-accused/Bahaddursingh dodged to handover any agreement or consent letter. No endeavour was made to transfer licence in the name of informant. Ultimately he promised to refund Rs.10,00,000/- and executed cheques which were dishonoured. It is thus alleged that informant was being duped for Rs.10,00,000/- by Bahaddursingh who was acting on behalf of original licence holder.

5. Learned Counsel for the applicants submits that there was no transaction or contract between the original licence holder or the applicants and the informant. No amount was ever received by the applicants. In the absence of any inducement by them and having not received any amount, no prima-facie case is made out for offence alleged.

6. It is further submitted that entire transaction was between informant and Bahaddursingh, who was not agent of the applicants. The respondent no.2 has initiated proceedings under Section 138 of the Negotiable Instruments Act against Bahaddursingh which shows incriminating role of Bahaddursingh. Learned Counsel would submit that the partnership deed between that the applicants/Gangadevi and the informant would not take the case further. It is therefore, submitted that the criminal proceedings are liable to be quashed.

7. Learned APP would submit that the applicants are acting in collusion with co-accused/Bahaddursingh. There is incriminating material in the form of statements of eye-witnesses Rahul and Ramdas. As the huge amount has been parted with by the informant, this is not a fit case to quash the proceeding.

8. Learned Counsel for the respondent no.2 would submit that the applicants are the masters and co-accused/Bahaddursingh was their agent. Informant was misrepresented by all the accused-persons for transferring the licence which was already suspended by order dated 12.07.1999. Therefore the applicants have played role in deceiving the respondent no.2, which could be established during the course of trial.

9. We have considered rival submissions of the parties. We have gone through the relevant documents of the investigation of the impugned FIR. Dineshlal the original licence holder, died on 17.09.2015. It is a matter of record that by order dated 12.07.1999, liquor licence was suspended. Reading of FIR discloses transaction and the interactions between the informant and co-accused/ Bahaddursingh. There is no material on record to show that Bahaddursingh was acting as an agent or representing original licence holder.

10. It further reveals that Bahaddursingh received total amount of Rs.10,00,000/- from the informant under the pretext of transfer of the licence. Thereafter he promised to refund the amount by executing three cheques drawn on State Bank Of India. All the cheques were dishonoured and led to prosecution in S.C.C. No.10140/2019 under Section 138 of the N.I. Act. Had the amount been received by applicants, Bahaddursingh would not have accepted liability and would not have agreed to refund the amount by issuing cheques to the informant.

11. There is no whisper or allegation in the complaint, supplementary statement or statements of the witnesses that the applicants having acted in collusion with co-accused Bahaddursingh. Similarly, there is nothing on record to show that after receiving amount from the informant, Bahaddursingh remitted it to the applicants. We are shown agreement dated 10.04.2019, which was executed between informant and co-accused-Bahaddursingh. By this agreement only Bahaddursingh acknowledged his liability to refund amount of Rs.10,00,000/-. The agreement does not show involvement of the applicants. The material on record does indicate incriminating role of Bahaddursingh only.

12. We have considered the statements of witnesses Rahul and Ramdas, who are supposed to be the eye-witnesses for the transaction occurred on 13.10.2016 at the residence of informant. We have also considered the supplementary statements and the statements of other witnesses namely Ajit and Ramesh. These statements do not indicate any incriminating role against the applicants.

13. We have not been shown any document and there is no circumstance to suggest that co-accused-Bahaddursingh was acting as an agent of the applicants. The record does not reveal any interaction between the applicants and the respondent no.2. On the contrary, there is overwhelming evidence against Bahaddursingh. We have perused order dated 15.10.1999 suspending the licence. However in the absence of any collusion amongst the accused persons, it cannot be inferred that the applicants induced informant to part with money though the licence was under suspension. Even partnership deed though executed between applicant/Gangadevi and the informant, does not show any deception or inducement either by Gangadevi or other applicants.

14. What transpires from record is that there is no inducement by the applicants, no wrongful gain by them and as such offences under Sections 420, 406, 507 of IPC cannot be attracted. We find no prima facie case to proceed against them considering the entire conspectus of the matter.

15. Learned Counsel for the applicants has cited judgments in the matter of **Sarabjit Kaur Vs. State of Punjab and Anr.** 2023 LiveLaw

(SC) 157 (Paragraph No.13); **Vinod Natesan Vs. State of Kerala**, 2019 ALL SCR (cri) 63 (Paragraph No.3 and 6); **M/s. Thermax Ltd. & Ors. Vs. K.M. Johny & Ors.** (Paragraph No.19) and **Deepak Gaba and Others Vs. State of Uttar Pradesh and Anr.** Criminal Appeal No.2328/2022. These are distinguishable on facts.

16. Considering the parameters laid down by the Supreme Court in the matter of **State of Haryana and Ors. Vs. Bhajan Lal and Ors.**, AIR 1992 SC 604, we are inclined to allow application. We, therefore, pass following order :

ORDER

(i) The Criminal Application is allowed.

(ii) FIR bearing C.R. No.654/2019 registered with CIDCO Police Station, Aurangabad and consequential RCC No.1284/2020 pending before the Judicial Magistrate First Class, Aurangabad, are quashed and set aside.

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

NAJEEB...