2024:BHC-AUG:18616-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

936 CRIMINAL APPLICATION NO.2614 OF 2024

PRATHMESH DILIP SAWANT

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. B.R. Kedar, Advocate for applicant

Mr. A.D. Wange, APP for respondent No.1

...

CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.

DATE : 07th AUGUST, 2024

ORDER :

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing and setting aside the First Information Report vide Crime No.230/2019 registered on 19.10.2019 with Bhusawal City Police Station and proceedings i.e. Regular Criminal Case No.123/2023 arising out of the said First Information Report pending before learned Judicial Magistrate First Class, Bhusawal, Dist. Jalgaon, for the offence punishable under Sections 420, 465, 468, 471, 472, 120-B of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. B.R. Kedar for applicant and learned APP Mr. A.D. Wange for respondent No.1. It is not even necessary to issue notice to respondent No.2.

3 Learned Advocate for the applicant has submitted that applicant is a 23 years old student and has been unnecessarily roped as accused No.1 by respondent No.1. It is alleged by respondent No.2 that she was pursuing her computer operator trainee ship at Mumbai Port Trust and thereafter developed friendship with the applicant, who was also a trainee. It was suggested by applicant to her that his relative viz. Ajinkya Samant is serving on good post in Mumbai Naval Dockyard and would provide her a job, for which she has to pay amount of Rs.12,00,000/-, in installments. Initially demand was made of Rs.1,00,000/- in the year 2016 and assurance was given of providing her a call letter. Thereafter, she complied with the demand of amount, but no call letter was given. Thereafter she made inquiry, then the applicant replied that he would be sending selection list by way of E-mail and as per the selection list she was at Sr.No.67. It is then alleged by her that applicant had sent medical examination letter to her on 22.04.2018 signed by the Assistant General Manager having stamp of the concerned Department and then the applicant demanded amount of Rs.2,00,000/- to complete further process of recruitment. The amount was

collected by her parents by selling gold ornaments and by other mode. Ultimately she has not received any job as promised and, therefore, the First Information Report has been lodged. In fact, the story is different. The informant had sent notice through her Advocate to the applicant on 21.08.2018 for recovery of the alleged amount, which she alleges that the applicant had extracted from her. The applicant had replied the same by denying the allegations. Thereafter, a notice was given again demanding amount of Rs.12,00,000/- and at that time threat was given to lodge prosecution against the applicant. The applicant is having call recording of the said call in his mobile and he is ready to give certificate under Section 65-B of the Indian Evidence Act. She had lodged complaint with Bhusawal Police Station on 27.10.2018, but no cognizance was taken and, therefore, she made complaint to the Superintendent of Police, Jalgaon, however, no cognizance was taken of that also, but then lodged a private complaint for taking action under Section 163 of the Code of Criminal Procedure before learned Judicial Magistrate First Class, Bhusawal, which was allowed and on the basis of the said order the First Information Report has been lodged. When the police authorities have initially not taken cognizance, it is only upon the intervention of the Court the same has been done. Therefore, then anyhow the charge sheet has been filed. If the contents of the charge sheet are considered, then relatives have not even stated as to how they have raised such amount when that was given and how it was given to the applicant or to any other accused. It would be a futile exercise to ask the applicant to face the trial on the basis of such evidence.

4 Learned APP supported the charge sheet and submitted that the material collected is subject-matter of the charge sheet, which prosecution would prove at the appropriate stage.

5 Taking into consideration the limitations while exercising the powers under Section 482 of the Code of Criminal Procedure, when charge sheet is filed; the evidence in the charge sheet is scrutinized to that extent only. Since the contents of First Information Report are already reproduced to a much extent, we are not repeating the same. No doubt, there was exchange of notice between the informant and the applicant prior to First Information Report, we do not find any illegality in adopting procedure by the informant i.e. when the police refused to take down the First Information Report, she had then approached the Superintendent of Police and when he has also not taken cognizance of the matter, she approached the learned Judicial Magistrate First Class under Section 156(3) of the Code of Criminal Procedure. Important point to be noted is that the applicant appears to have never challenged the order passed by learned Magistrate for registration of

the offence and carrying out investigation under Section 156(3) of the Code of Criminal Procedure. It will not be out of place to mention here that when question was asked to learned Advocate, as to why the applicant had not challenged that order; the learned Advocate for the applicant then prayed for leave to amend. Further, it is to be noted that when the investigation was handed over to the concerned Police Station, initially 'A' Summary was filed, however, that was not accepted by learned Magistrate and by order dated 14.03.2022 the learned Magistrate had directed Sub Divisional Police Officer, Bhusawal to carry out the further investigation. Thereafter, the charge sheet appears to have been filed on 13.07.2023. There appears to be some bank transactions for some amounts, for which the evidence has been collected. It is also to be noted that accused No.3, who appears to be the mother of present applicant, has made a statement. Though it is not admissible in evidence, it gives a different angle, wherein they appears to have come with a fact that there was love affair between the applicant and respondent No.2 and the applicant had given promise to marry, which was not fulfilled and, therefore, the amount was asked. Thus, we can take only note of the fact that there is another defence available or tried to be taken by the accused persons, which they will have to prove it at the time of trial and, therefore, we do not find this to be a fit case where the First Information Report can be quashed. There is evidence in the form of some money transaction from informant and her family members to the applicant, so also messages through e-mail to the informant and statement of the informant under Section 164 of the Code of Criminal Procedure. Hence, the application is dismissed at the threshold.

(ABHAY S. WAGHWASE, J.) **(SMT. VIBHA KANKANWADI, J.)**

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