



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

945 CRIMINAL APPLICATION NO.2761 OF 2023

Shivkant Ramesh Biradar,
Age 28 yrs., Occ. Labour,
R/o Sangnal, Tq. Aurad Barhali,
Dist. Bidar (Karnataka).

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Station,
Udgir (Rural), Dist. Latur.
- 2 Dnyaneshwar Kishor Pandilwar,
Age 35 yrs., Occ. Business,
R/o Nai Abadi, Udgir,
Tq. Udgir, Dist. Latur.

... Respondents

...

Mr. S.K. Shaikh, Advocate for applicant
Mr. A.V. Lavte, APP for respondent No.1
Mr. N.K. Tungar, Advocate for respondent No.2

...

WITH

CRIMINAL APPLICATION NO.2762 OF 2023

Ismail Nabisab Chaus,
Age 44 yrs., Occ. Labour,
R/o Dongaraj, Tq. Chakur,

Dist. Latur.

... **Applicant**

... **Versus** ...

- 1 The State of Maharashtra
Through Police Station,
Udgir (Rural), Dist. Latur.
- 2 Dnyaneshwar Kishor Pandilwar,
Age 35 yrs., Occ. Business,
R/o Nai Abadi, Udgir,
Tq. Udgir, Dist. Latur.

... **Respondents**

...

Mr. S.K. Shaikh, Advocate for applicant

Mr. A.V. Lavte, APP for respondent No.1

Mr. N.K. Tungar, Advocate for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI &
R.W. JOSHI, JJ.

DATE : 12th NOVEMBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Both these applications are filed initially for quashing the First Information Report vide Crime No.146/2023 dated 10.03.2023 registered with Police Station, Udgir (Rural), Tq. Udgir, Dist. Latur and later on by way

of amendment for quashing the charge sheet No.168/2023 i.e. proceedings in Regular Criminal Case No.198/2023 pending before learned Judicial Magistrate First Class, Udgir, for the offence punishable under Section 381 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. S.K. Shaikh for applicant, learned APP Mr. A.V. Lavte for respondent No.1 and learned Advocate Mr. N.K. Tungar for respondent No.2, in both applications.

3 Perusal of the First Information Report and the charge sheet would show that respondent No.2 had filed First Information Report stating that he runs Toor Pulse Mill by name “Vinayaka Agro Industries” at Lohara, Tq. Udgir, Dist. Latur. He has employed 10 workers in his factory/mill and there are other workers as ‘Hamal’. Therefore, in all there are 20 workers working with him. He does not visit the mill for 24 hours but by visiting the mill/factory periodically he monitors the work. Applicant in Criminal Application No.2761 of 2023 is the Manager in the mill since last about seven years. Then he says that he had come to know from other workers that since 08.00 a.m. of 15.10.2022 there is theft of Toor pulse from his mill. Thereafter, he made inquiry as to who is committing the theft. At that time, he came to know that the present applicants are doing that work and he says

that around 9.50 p.m. on 06.03.2023 around 149 quintal Toor i.e. around 50 k.gs. in each gunny bag, such 298 bags worth Rs.16,39,000/- have been stolen and since then the Manager and his two associates have not reported. Thus, it can be seen that the First Information Report is based on hearsay information.

4 Now, the charge sheet is filed and, therefore, it is required to be seen as to what is the material that has been collected by the Investigating Officer. It appears that some monthly summary of the factory has been collected. If it is the case in the First Information Report that the theft is from 15.10.2022, still the monthly statements from year 2017 have been collected. We would restrict ourselves to the period. But it is to be noted that the last document of monthly statement is from 01.04.2022 to 31.03.2023. That means, the monthly statement from 15.10.2022 to 06.03.2023 was not collected or produced by respondent No.2. He has also produced certain receipts, but that is not sufficient, because it was required to be shown by him that what was the stock on or before 15.10.2022 and how it went fluctuating till 06.03.2023. In fact, his First Information Report is not clear. When he had learnt about the theft on 15.10.2022, then after gathering the information, why he had not lodged the report immediately, is a question. Whether then he intended to restrict about the incident dated

06.03.2023, is also a question and for that purpose to show that there were 298 gunny bags containing around 149 quintal Toor was available in his factory ought to have been shown by him. There is a supplementary statement of the informant, wherein he says that he had given the First Information Report hurriedly stating that there is theft of only Toor pulse to that extent, but then he says that after thorough inquiry there were 180 bags of Toor pulse (around 90 quintal) worth Rs.9,50,000/-, 180 bags of whole Toor (90 quintal) worth Rs.5,85,000/- and 40 bags of green gram (around 14 quintal) worth Rs.1,15,000/-. But still he has not supported it by documentary evidence. There are statements of father and brother of the informant, which are hearsay in nature. Then, there is statement of one Pavan Muttepawar, who is the cousin brother of informant, which is also hearsay. There is statement of one Satish Bansode, who is the Watchman, working with the informant. His statement would show that when the informant asked him on 09.03.2023, he told that he wants to say something to informant. When assurance was given, he told that since last 5-6 months the Manager is taking the material at night time in vehicles and, therefore, he should get it confirmed. Thus, according to him, he had told the fact to his employer for the first time on 09.03.2023. Then the question arises, from whom the informant received information on 15.10.2022 and what stopped this witness from disclosing the fact to his employer or in other words, what

made the Watchman to withhold the information for about 5 to 6 months. Statements of one Sugriv Ghute, who was working as Driver with informant states that informant asked him on 20.03.2023 as to whether he has knowledge about the theft. When he said 'No', then the informant told him about the theft. In fact, when the First Information Report was filed on 10.03.2023, the subsequent information by the informant itself to this person will not help the prosecution in any manner. There is also statement of one Nandkishor Kalani. When it is stated that he had purchased the Toor pulse from one Shashank Kulkarni and Shivkant Biradar (present applicant/Manager) it is stated that this witness has regular transaction between himself and informant. It appears that he had no suspicion in respect of the transaction and then says that he had purchased 15 quintal of Toor pulse from those two persons a month prior to his statement i.e. on 22.03.2023. He has not produced any documentary evidence to support his contention before the police authority. Similar is the case of one Parmeshwar Tiprale. It cannot be said that there is sufficient evidence for proceeding with the matter. Under such circumstance, this is a fit case where we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure to quash the First Information Report and the proceedings as against both the applicants. Hence, following order.

ORDER

- i) Both Criminal Applications stand allowed.
- ii) Regular Criminal Case No.198/2023 pending before learned Judicial Magistrate First Class, Udgir, Tq. Udgir, Dist. Latur arising out of First Information Report vide Crime No.146/2023 dated 10.03.2023 registered with Police Station, Udgir (Rural), Tq. Udgir, Dist. Latur, for the offence punishable under Section 381 read with Section 34 of the Indian Penal Code, 1860 stands quashed and set aside as against applicant viz. **Shivkant Ramesh Biradar** in Criminal Application No.2761 of 2023 and applicant viz. **Ismail Nabisab Chaus** in Criminal Application No.2762 of 2023.

(R.W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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