



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

CRIMINAL APPLICATION NO. 2398 OF 2021

Dinesh S/o Abarao Bobade,
Age : 43 Years, Occu. : Service,
R/o Vetalnagar, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad. .. Applicant

Versus

1. The State of Maharashtra,
Through Investigating Officer,
Police Station, Lohara,
Tq. Lohara, Dist. Osmanabad.
2. Atul Prabhakar Walwadkar,
(Assistant Superintendent
District Court, Osmanabad)
Age : 55 Years, Occu. : Service,
R/o Samtanagar, Osmanabad,
Tq. and Dist. Osmanabad. .. Respondents

Shri Ameya Sabnis, Advocate h/f Shri E. S. Murge, Advocate for
the Applicant.

Shri V. K. Kotecha, A.P.P. for the Respondent No. 1.

Shri R. J. Godbole, Advocate for the Respondent No. 2.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

**CLOSED FOR ORDER ON : 01.04.2024
ORDER PRONOUNCED ON : 08.04.2024**

FINAL ORDER (Per Shailesh P. Brahme, J.) :-

- . Heard both the sides finally at the admission stage.
2. Applicant is seeking quashment of first information report

bearing CR No. 203/2021 registered with Lohara Police Station, Tq. Lohara, Dist. Osmanabad and consequential proceedings of R.C.C. No. 07 of 2022 pending before the Chief Judicial Magistrate, Osmanabad. He is facing prosecution for the offence U/Sec. 409, 420 r/w Sec. 34 of the Indian Penal Code (for short "I.P.C.") along with co-accused Ramchandra Dashrath Waghmare. It is informed that co-accused died during pendency of proceeding and the prosecution stands abated as against him.

3. A report is lodged by the respondent No. 2, who is Assistant Superintendent, District Court Osmanabad that when inspection of Court at Lohara was conducted certain objections were raised. In pursuance to the objections, he was directed to lodge report against accused persons for having committed offence punishable u/sec. 409, 420 r/w Sec. 34 of the I.P.C. for embezzling Rs. 63/-. It is alleged that applicant was working as a Junior Clerk and co-accused Ramchandra Waghmare was Assistant Superintendent of the Civil Court Lohara. An application seeking certified copies was received on 03.08.2018. It is alleged that no receipt was issued for Rs. 63/- towards copying charges and the amount is alleged to have been misappropriated. The amount is not shown credited in the accounts.

4. The offence was investigated and the charge sheet was filed. It culminated in R.C.C. No. 07 of 2022, which is pending before the Chief Judicial Magistrate, Osmanabad.

5. Learned counsel for the applicant submits that no offence

can be made out from the papers of investigation and there is no incriminating role attributable to the applicant. He would submit that the applicant was not entrusted a duty to receive copying charges and to issue the receipt. For that purpose reliance is placed on duty list. It is further submitted that the alleged offence is trivial in nature and liable to be quashed as subsequently amount has been deposited by him. It is further submitted that no disciplinary action has been taken and he has been promoted also. Thus he would submit that it would be an abuse of process of law to proceed against the applicant.

6. Learned Assistant Public Prosecutor would repel the submissions of the learned counsel for the applicant. According to him applicant was responsible for calculating copying charges, receiving cash and issuing receipt being a copying clerk. He would submit that the mischief was noticed during the course of inspection. An investigation is conducted to collect the register of applications and other relevant documents. There is material on record to show that *prima facie* case is made out against the applicant. Learned A. P. P. places on record daily fees book and other relevant documents to show that amount of Rs. 63/- has not been credited.

7. Learned counsel Mr. Dr. R. J. Godbole for the respondent No. 2 supports learned A. P. P. He informs the Court that disciplinary action was initiated against the applicant and a show cause notice was issued on 21.11.2022. Having satisfied with the reply dated 21.12.2022, given by the applicant,

disciplinary action was dropped. It is further submitted that there is incriminating material available to proceed against the applicant.

8. We have considered rival submissions. We have perused papers of the investigation and documents placed across the bar. It is a matter of record that the incident in question occurred on or about 17.08.2018. Applicant was working as Junior Clerk in the Court at Lohara. Application for certified copies was received on 03.08.2018 and applicant calculated the copying charges at Rs. 63/-. Deceased co-accused made an endorsement on 17.08.2018 on the application seeking certified copies, of having received Rs. 63/-. It also reveals from record that applicant deposited Rs. 63/- to comply the condition imposed for enlarging him on bail. It has not been traversed by the respondents that after issuing show cause notice a reply was tendered by him which was found to be satisfactory. He has been promoted also. Thus, the present case involves at the most temporary embezzlement of Rs. 63/-.

9. We have considered the duty list of a Junior Clerk produced by the applicant on record. We do not find that any duty was cast upon the applicant for receiving the copying charges and issuing the receipt. We cannot be oblivious of the fact that co-accused was working as the Assistant Superintendent at that time. The application for certified copy shows his endorsement that Rs. 63/- was deposited vide receipt No. 8633 on 17.08.2018. Co-accused was under obligation to receive copying charges and to issue receipt. We find merit in the submission of the learned counsel

for the applicant that the applicant cannot be said to be responsible for not crediting the amount and for not issuing the receipt for that.

10. It is case of temporary embezzlement of Rs. 63/-. Learned counsel for the applicant places reliance on the judgment of the Supreme Court in the matter of N. K. Illiyas Vs. State of Kerala reported in *2012 (12) SCC 748*. In that matter there was temporary embezzlement of Rs. 1,839/-. Accused was convicted by the Trial Court, which was confirmed by the High Court. The conviction was set aside by the Supreme Court by making following observations in para No. 4 :

“4. We are further of the opinion that the offences under IPC alleged against the appellant are so trivial and have caused no harm and are in fact no offences in the eye of the law and the benefit of Section 95 of the Penal Code is thus available to the appellant. Admittedly, a sum of Rs. 1839/- had been deposited in the post office before the due date i.e. 4-3-1992 and that no loss had been caused to the Department, even if it is assumed that a false entry had been made in the record to show the payment on 10.02.1992.”

11. By implication of Section 95 of the I.P.C. as laid down by the Supreme Court, we are of the considered view that no offence can be made out U/Sec. 409 of the I.P.C. The amount involved is trivial in nature having caused no harm. In fact there is no offence in the eye of law.

11. We have considered the submissions of the learned counsel for the respondents and gone through the statements of witnesses. It reveals that a preliminary enquiry was conducted and a report was submitted in respect of the misconduct of the accused persons noticed during the course of inspection. Even the endorsement on the application for certified copy would indicate incomplete serial number of the receipt. However, by no stretch of imagination any incriminating role can be attributed to the applicant. It would be futile exercise to proceed against the applicant in the given facts and circumstances. We are, therefore, inclined to allow the criminal application and pass following order :

O R D E R

- (I) The criminal application is allowed.
- (II) The FIR bearing CR No. 203/2021 registered with Lohara Police Station, Tq. Lohara, Dist. Osmanabad and consequential proceedings of R.C.C. No. 07 of 2022 pending before the Chief Judicial Magistrate, Osmanabad for the offence U/Sec. 409, 420 r/w Sec. 34 of the Indian Penal Code are quashed and set aside to the extent of the applicant.
- (III) The criminal application is disposed of.

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