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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 246 OF 2024

1. Chintan Ashwin Sanghavi

2. Ms. Deepali Vinayak Gaikwad .. Applicants

Vs.

The State of Maharashtra .. Respondent

.....
Mr. Bhavesh Thakur for the applicants
Mr. A.A. Palkar, APP for the respondent – State
.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 19th JUNE, 2024.

PRONOUNCED ON : 24th JUNE, 2024.

P.C.

1. Inherent powers of this Court under Section 482 of the Criminal Procedure Code are invoked by the applicants, who are being prosecuted by the respondent no.1 for the alleged offences punishable under Sections 420, 465, 468, 471 r/w 34 of the Indian Penal Code.

2. Facts in brief are as follows.

3. During Covid-19 pandemic, applicant no.2 – Deepali Vinayak Gaikwad was traveling by a local train on Western Railway. When she alighted at Mahalaxmi Railway Station, during checking the passengers as per SOP by the Railway Ticket Inspector, it was noticed that she was carrying a fake BMC's photo-identity card and a ticket. The Ticket Inspector had suspicion as regards the authenticity of the photo-identity card issued by the BMC and, therefore, the applicant no.2 – Deepali was brought to the Mumbai Central Railway Police Station. Upon inquiry, it revealed that she works as a Accountant in a private firm (Pipe Company) of one M/s. Motilal Laxmichand Sanghvi at Churchgate, Mumbai. The photo-identity card was issued by the partner of the company i.e. applicant – Chintan. When inquired with Chintan, it revealed that witness namely Subramaniam Mahadevan who was in contact with accused no.3 Anees Abdul Sattar Rathod had given his Mobile No. 9664997397 to Mr. Subramaniam posing as a BMC's Officer, who had forged the said photo-identity card alleged to have been given by the BMC by charging Rs.700/- per photo-identity card.

4. In short, it is the case of the prosecution that the applicants – Deepali and Chintan, without ascertaining the genuineness of the

said photo-identity cards, which were issued during Covid-19 pandemic, were found possessing the same and traveling despite restrictions imposed by the Government during those days.

5. I heard learned Counsel for the applicants and the learned APP.

6. The learned Metropolitan Magistrate, 36th Court, Mumbai had already framed charge against the applicants and the accused no.3 - Anees Abdul Sattar Rathod on 16.03.2021 for the offences punishable under Sections 420, 465, 468, 471 r/w 34 of the Indian Penal Code.

7. During investigation, it revealed that the said photo-identity cards were not issued by the BMC, Ward 'F' North. There were certain criminals who were indulged in circulating fabricated photo-identity cards to the needy people. The investigation also revealed that the main culprit was accused no.3 – Anees Abdul Sattar Rathod against whom there were offences registered in the past as depicted hereinbelow:-

Sr. No.	Police Station	C.R. No. and Offences
1.	Dadar Railway Police Station	C.R.No. 750/2020, under Sections 420, 170, 171 of the IPC
2.	Kurla Railway Police Station	C.R. No.1001/2020, under Sections 420, 465, 468, 471, 34 of the IPC
3.	Wadala Railway Police Station	C.R. No.664/2020 under Sections 420, 465, 468, 471, 34 of the IPC
		C.R. No. 665/2020, under Sections 420, 465, 468, 471, 34 of the IPC
4.	Borivali Railway Police Station	C.R. No. 892/2020, under Sections 420, 465, 468, 471, 34 of the IPC

8. At the outset, learned Counsel for the applicants submits that no opportunity was given to the applicants to go through the charge-sheet and to prefer an application for discharge. Subsequently, an application for discharge came to be withdrawn since the trial Court had hurriedly framed charge. It is a matter of record that till date, there is no report of the Forensic Science Laboratory confirming the fact that the said photo-identity cards are fake. Apart from that it is apparent from the record that the learned Magistrate failed to comply with the mandate of Section 238 and 239 of the Cr.P.C., in the sense, there seems to be non-

compliance of Section 207 of the Cr.P.C. which essentially contemplates that when a warrant-case is instituted on a police report and when the accused appears or is brought before a Magistrate at the commencement of the trial Court, the Magistrate shall satisfy himself that he has complied with the provisions of Section 207 of the Cr.P.C. There seems to be no compliance of Section 207 of the Cr.P.C. It is also apparent from the record that the Magistrate has not given an opportunity to the applicants of being heard and, therefore, framing of the charge without compliance of the aforesaid provisions would not sustain. The learned Counsel invites my attention to the fact that without granting an opportunity of being heard the Magistrate framed a charge on the very day which is in total violation of the rights of the applicants under Section 239 of the Cr.P.C.

9. Having perused the record, more particularly, the statement of the witnesses and *panchanama* etc. the charge appears to be defective as there is no question of cheating the Government or rather the Railway Department by the applicants as there is nothing on record to indicate that they had fraudulent or dishonest intention of deceiving the Railway Department to deliver any

property to any person or to retain any property or to intentionally induce the said Department to do or omit to do anything, which it would not do or omit if the Department were not so deceived.

10. Similarly, in view of the ratio laid down by the Hon'ble Supreme Court in case of *M/s. Bandekar Brothers Pvt. Ltd. & Anr. Vs. Prasad Vasudev Keni & Ors. (2020) 20 SCC 1* the object of framing a correct charge with necessary details is to enable the accused to meet the prosecution case and understand the exact allegations made against him. Errors in that regard would result in failure of justice.

11. Essentially, a Standard Operating Procedure was prevailing during Covid-19 pandemic, which came to be issued by the State / Central Government. The applicants belong to a firm which were tasked with supply of essential products such as pipelines required by the Government and Semi-Government companies like L&T, Maharashtra Seamless Ltd., Indian Oil Corporation, BPCL etc. The applicants' role appears to be totally *bona fide* who through their acquaintance Mr. Subramaniam Mahadevan, who in turn was in contact with accused - Anees Abdul Sattar Rathod obtained the

photo-identity cards believing that the accused - Anees Abdul Sattar Rathod is an Officer of the BMC.

12. In case of M/s. Bandekar Brother Pvt. Ltd. (Supra), the Supreme Court while dealing in a Criminal Appeal No.546 – 550 of 2017 analyzed scope of Sections 463 and 464 of the Indian Penal Code. Para 47 of the judgment reads thus :-

“47. The “First” category of Section 464 makes it clear that anyone who dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, can be said to make a false document. Several judgments of this Court have held that assuming dishonesty or fraud, the second ingredient of the “First” category of Section 464 is that the document itself must be made by or by the authority of a person by whom or by whose authority the person who creates the forgery knows that it was not made. If the second ingredient is found missing, the offence of forgery is not made out at all. ”

13. It is quite apparent that there is absolutely no material to attract Sections 465 and 468 or even in that matter Section 471 of the Indian Penal Code.

14. Learned APP though supported the impugned order of

framing charge, he could not explain as to why there was not only non-compliance of Section 238 of the Cr.P.C. but also *sans* any material to frame a charge against the applicants.

15. Considering the aforesaid facts, the impugned charge is *ex facie* unjust and perverse which is liable to be quashed and set aside.

Consequently, the following order is passed :-

ORDER

(a) The application is allowed.

(b) The impugned charge dated 16.03.2021 framed by the learned Magistrate 36th Court, Mumbai arising out of CC No. 159/PW/2021 is quashed and set aside only in respect of applicant nos. 1 and 2.

(c) Liberty to the learned Magistrate to proceed further in accordance with law *qua* the remaining accused.

16. The application stands disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)