



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] No. 415/2023.

Sanjay s/o Ratanlal Choudhari,
Age 51 years, Occupation – Service,
Resident of Dwarka Nagri,
Toshniwal Layout, Tahsil and
District Akola.

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APPLICANT.

VERSUS

1.The State of Maharashtra,
through Police Inspector, Police Station
Khadan, Tahsil and District Akola.

2.Sandip Govind Umalkar,
Age Major, Occupation – Business,
resident of Shiv Wardhan Apartment,
Flat No.F-2, Madhav Nagar,
Gauraksha Road, Tahsil and
District Akola.

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NON-APPLICANTS.

Mr. R.M. Tahaliyani, Advocate for the Applicant.
Mr. A. Chutke, A.P.P. for Non-applicant No.1/State.
Proposed Legal Non-applicant No.2 Served.

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CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.

DATE : AUGUST 21, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. **Admit.**

By consent of the learned Counsel present for the parties,
the matter is taken up for final disposal.

2. This is an application seeking to quash the criminal proceeding bearing R.C.C.No.1175/2020 pending on the file of 3rd Judicial Magistrate, First Class, Akola arising out of first information report bearing Crime No.682/2018 registered with Khadan Police Station, Akola for the offence punishable under Section 420 of the Indian Penal Code.

3. On the basis of a report dated 20.12.2018, lodged by the informant Sandeep, the aforesaid crime came to be registered. It is informant's case that he was running a Pharmacy shop, whilst the

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applicant Sanjay was also in the same business. The informant stated that he met the applicant somewhere in the month of December, 2017. At the relevant time, the applicant represented him that they would procure and provide ayurved products from the farmer, if the informant desires to buy the same. The applicant assured to provide those products on payment being made in advance. The informant has further stated that he met co-accused Ashok, who similarly gave same assurance and also asked him to deposit the money for supplying the ayurved products.

4. On the basis of those assurances, on 18.02.2018, the informant has paid an amount of Rs.1,40,000/- to the co-accused Ashok. Again he paid further sum of Rs.60,000/- and then Rs.1 lakh to co-accused Ashok at his instance. The informant has stated that thereafter he has requested both of them to refund the money, but, they declined, hence the report.

5. The learned Counsel for the applicant would submit that besides initial assurances, there is no role of the applicant in the entire

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incident, as stated in the first information report. Particularly, it is argued that co-accused Ashok has also assured to the informant to supply the ayurved products on payment in advance. According to the applicant on the basis of assurance given by the co-accused Ashok, the informant has paid huge amount to Ashok only and therefore, no criminal liability would attract as against the applicant.

6. In the meantime the informant had expired. His legal heirs were served with notice, but, they have chosen not to appear. The police have investigated the matter and filed charge sheet. Statement of some persons have been recorded. Bare reading of the first information report discloses that besides first assurances, no further role is ascribed to the applicant. Admittedly, further assurance were given by the co-accused Ashok, as well as the entire money was paid to co-accused Ashok in installments. In the circumstances, it is difficult to hold that the applicant has dishonestly induced the informant to deliver the product. It is not the case of the informant that on believing the initial assurances of the applicant, he has paid money to the co-accused Ashok.

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7. Perusal of entire charge sheet reveals that besides the statement of informant, there is nothing to support the contentions raised by the informant against the applicant. By the time the informant had expired and thus, one can easily foresee that there may not be evidence about the alleged initial assurances given by the applicant to the informant. It reveals that the main allegations are against the co-accused about giving assurances and accepting money. The entire money was paid through bank transaction in the account of Ashok only. In the circumstances, even if entire material is accepted as it stands, the essential ingredients to constitute the offence are missing against the applicant. In view of above, continuation of criminal prosecution would amount to an abuse of the process of Court. Hence, the following order.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The criminal proceeding bearing R.C.C.No.1175/2020

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pending on the file of 3rd Judicial Magistrate, First Class, Akola arising out of first information report bearing Crime No.682/2018 registered with Khadan Police Station, Akola for the offence punishable under Section 420 of the Indian Penal Code. is hereby quashed and set aside, so far as it relates to the applicant – Sanjay Ratanlal Choudhari only.

JUDGE

JUDGE