



Judgment

932 apl 735.23

1

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

CRIMINAL APPLICATION (APL) NO. 735/2023

Mohd. Hamid s/o. Hafiz Ansari,
Age 29 yrs., Occ. Business,
R/o. Ward No.6, Walni, Mines,
Hafiz Chal, Tah. Saoner, Dist. Nagpur.

... **APPLICANT**

VERSUS

1. State of Maharashtra,
through P.S.O. Khaparkheda Police
Station (Nagpur Rural),
Dist. Nagpur.
2. State of Maharashtra,
through A.P.I. Anil Raut,
Khaparkheda Police Station,
(Nagpur Rural), Dist. Nagpur.

...**NON-APPLICANTS**

Mr. S. Singha, Advocate for applicant.
Mr. A.B. Badar, Addl. Public Prosecutor ('APP') for non-applicant
No.1.

CORAM : VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.
DATE : 16.01.2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2. **Admit.**

2

3. This is an application seeking to quash charge-sheet No.102/2023 arising out of Crime No.517/2022 registered by Police Station Khaparkehda (Nagpur Rural), Dist. Nagpur for the offence punishable under Sections 379, 109 of the Indian Penal Code.

4. The Local Crime Branch, Nagpur Rural received secrete information about illegal transpiration of sand. It caused them to lay trap as per secrete information. At the relevant time, one truck bearing registration No. MH-40-AB-3590 was found carrying sand. The Police intercepted the truck and inquired with the truck driver Kawale about contents. It was revealed by truck driver that vehicle is owned by co-accused Vinayak Bonde and on the say of by sand was filled by the applicant through JCB by Mr. Chand Ansari in front of Star Travel Office, Walni. It was found that there was four brass sand i.e. minor minerals which was without royalty. In view of that the offence of theft has been registered. The Police carried investigation and filed charge-sheet. It is informed that yet charges have not been framed.

3

5. The learned counsel appearing for the applicant vehemently argued that the entire material collected during the course of investigation does not make out prima facie case to constitute the offence. It is submitted that the Investigating Officer has not visited the place from where alleged sand was seized nor JCB which was allegedly used in filling sand was seized. It is submitted that the allegation made in the report even though they are accepted at their face value in their entirety does not make out a prima facie case.

6. The learned APP on the other hand, would submit that on the basis of secrete information, truck was intercepted while illegally carrying sand. Since minor minerals were taken away without permission, it is an offence of theft. According to the State, the applicant has abetted the commission of offence by facilitating to carry sand. It is submitted that all the Police Personnel who participated in raid have stated regarding the disclosure made by the co-accused about the complicity of the applicant.

4

7. We have examined entire material and statements recorded during the course of investigation. Admittedly, the applicant was not found while carrying sand nor he owns vehicle, only material is about discloser made by the co-accused during the course of inquiry. Though the statement of co-accused is relevant, however no charge of conspiracy has been levelled. Besides statement of co-accused, we do not see any other material. The Police have not collected any material regarding the JCB as well as the place from where sand was allegedly taken away. The Tehsildar has not taken action of alleged theft of minor minerals. Pertinent to note that the Investigating Officer has not visited the place nor drawn panchanama from where the sand was removed.

8. In above circumstances, it is apparent that the material collected in support of the prosecution is not sufficient to make out prima facie case against the applicant. On such a canvass, continuation of prosecution against the applicant amounts to abuse of the process of the Court.

5

9. In view of above, application is allowed. We hereby quash and set aside charge-sheet No.102/2023 arising out of Crime No.517/2022 registered by Police Station Khaparkehda (Nagpur Rural), Dist. Nagpur for the offence punishable under Sections 379, 109 of the Indian Penal Code.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)