



Judgment

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

CRIMINAL APPLICATION [APL] NO.312/2023.

Sachin s/o Dilip Shete,
Aged about 37 years,
Occupation – Private Business,
resident of Ward No.1, Bailwada,
District Nagpur.

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APPLICANT.

VERSUS

1.The State of Maharashtra,
Through P.S.O. Hingna,
District Nagpur.

2.Ashok s/o Jangluji Ghumde,
Aged about 62 years,
resident of Panchwati Park, Bunglow
No.32, Behind Hingna Court, Nagpur.

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NON-APPLICANTS.

Mr. R.M. Daga, Advocate h/f. Shri A.S. Band, Advocate
for the Applicant.

Mr. S.B. Bissa, A.P.P. for Non-applicant No.1.
None for Non-applicant No.2 - Served.

Rgd.

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

DATE : APRIL 23, 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 prosecution bearing Sessions Case No.206/2023, arising out of first information report bearing Crime No.18/2023 registered with Hingna Police Station, District Nagpur for the offence punishable under Sections 302, 143, 147, 148, 149, 504, 212, 109, 323 read with Section 34 of the Indian Penal Code, Sections 3, 7, 25 and 27 of the Indian Arms Act and Sections 37 and 135 of the Mumbai Police Act. The applicant Sachin Shete has been arrayed as accused no.10 in the proceeding.

Rgd.

3. At the instance of a report lodged by the father of the deceased, the aforesaid crime came to be registered on 09.01.2023. It is the prosecution case that on 08.01.2023 around 1.30 p.m., the deceased Avinash left his house. Around 8.30 p.m. one Mayur came to the house of the informant and asked for handing over four wheeler as the deceased wanted to go some where. In the late evening the informant learnt that the accused no.1 Deepak fired at the deceased with a gun. Accordingly, the informant rushed to the spot and learnt that Deepak, his wife and others by suspecting illicit relations of the deceased with wife of Deepak, killed him by using fire arms, therefore, the report.

4. Reading of the entire charge sheet discloses that the police have arrested the applicant for the allegation that while the main accused Deepak fled from the spot by two wheeler, the same was kept in the house of the applicant Sachin. It is alleged that the applicant was knowing that the accused Deepak has committed murder, still he has concealed his two wheeler and therefore committed an offence.

5. The prosecution has heavily relied on the memorandum statement of the applicant dated 12.01.2023. In the said statement the applicant allegedly disclosed that the main accused Deepak has informed him that he has committed murder and now he wants to run away by four wheeler. Deepak came to the house of the applicant by two wheeler and asked him to conceal the same, on which the applicant did the things. Within short time Deepak left the place by four wheeler. The said disclosure statement was followed by recovery, under which at the instance of the applicant one two wheeler parked in the nearby lane was seized.

6. The learned Counsel for the applicant submits that so far as the disclosure of commission of crime by the main accused Deepak is concerned, it is totally inadmissible and unbelievable. The disclosure statement can be used only to the extent to the knowledge of the accused regarding the place where the two wheeler was concealed. It is nobody's case that two wheeler was used for commission of crime. Rather it is the prosecution case that after the incident of firing, the main accused Deepak left the place by two wheeler, which was kept at the house of the applicant.

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7. The applicant / accused has been prosecuted for the offence punishable under Section 212 of the Indian Penal Code. In order to constitute an offence punishable under Section 212 (Harboring of Offender), it is essential that a person with knowledge should have harbored and concealed the offender. It is not the prosecution case that the applicant has harbored or concealed any person i.e. the main accused. Section 11 of the Indian Penal Code defines the term “person”, which means a body of persons or Company or Association. By no stretch of imagination the said term can include a vehicle, as contended by the prosecution. Therefore, it is difficult to accept the case of prosecution that the applicant has committed the offence punishable under Section 212 of the Code.

8. Besides that, the learned A.P.P. has not pointed out any provision under which the applicant can be charged. It is stated that the applicant was having knowledge about commission of a cognizable offence, but, he did not inform the same to the police. Memorandum statement of applicant to the extent of disclosure made to him by Deepak is totally inadmissible. Entire material does

Rgd.

not disclose that the applicant has knowledge about commission of the crime. It is not the prosecution case that the applicant has seen the occurrence. Thus, the seizure of two wheeler, even accepted that by itself would not attract any complicity of the applicant.

9. In view of above, we do not see any prima facie case against the applicant from the entire charge sheet. Continuation of criminal prosecution has serious repercussions, which amounts to abuse of the process of the Court. In view of that, Criminal Application is liable to be allowed, hence, the following order.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The criminal prosecution bearing Sessions Case No.206/2023, arising out of first information report bearing Crime No.18/2023 registered with Hingna Police Station, District Nagpur for the offence punishable under Sections 302, 143, 147, 148, 149, 504, 212, 109, 323 read with Section 34 of the Indian Penal Code, Sections 3,

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7, 25 and 27 of the Indian Arms Act and Sections 37 and 135 of the Mumbai Police Act, is hereby quashed and set aside in respect of the present applicant Sachin Dilip Shete only.

JUDGE

JUDGE