



Judgment

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

CRIMINAL APPLICATION (APL) NO. 15/2022

Naresh s/o Zituji Wanjari,
Age 29 years, Occ. Retired,
R/o. 2724 Shrikrupa,
in front of Police Station Lakhani,
Tq. Lakhani, Dist. Bhandara.

... **APPLICANT**

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station Palandur,
Dist. Bhandara.
2. Aahlad s/o Digambar Bhandarkar,
Age 41 years, R/o. Gujari Chowk,
Lakhani, Tq. Lakhani, Dist. Bhandara,
M. 9922962150.

...**NON-APPLICANTS**

Mrs. R.S. Sirpurkar, Advocate for applicant.
Mr. S. S. Doifode, APP for non-applicant No.1.
Mr. R. Vyas, Advocate for non-applicant No.2.

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

JUDGMENT RESERVED ON : 11.03.2024
JUDGMENT PRONOUNCED ON : 11.06.2024

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2**2. Admit.**

3. By this application, the applicant Naresh s/o Zituji Wanjari working as an Assistant Teacher at Govind High School and Junior College, Palandur is seeking to quash First Information Report ('FIR') vide Crime No. 82/2020 registered with Police Station Palandur, Dist. Bhandara for the offence punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code. The applicant seeks to quash FIR on the ground that the Police Report does not make out prima facie case against the applicant to constitute the offences charged. The report is silent about specific allegation against the applicant indicating his role in committing forgery, fraud and misappropriation. The applicant would submit that, in absence of prima facie material, continuation of prosecution amounts to abuse of the process of the Court.

4. Per contra, the State as well as informant resisted this application by filing reply. It is contended that co-accused Arvind s/o Atmaram Ramteke was working as a Headmaster (retired) whilst applicant Wanjari was serving as an Assistant Teacher in the said

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Educational Institution. Both of them in furtherance of common intention, have misappropriated a huge sum by fabricating false bills of purchase of various articles. Three member committee has conducted inquiry, in which the report has been submitted stating about the misappropriation. It is stated that the applicant and co-accused were jointly operating bank account which was used for withdrawal of sum and thus, there is material against the applicant. Moreover, it is submitted that investigation is still in progress and thus, at this juncture, there is no case to quash the prosecution.

5. Heard both sides exhaustively and gone through the investigation papers. At the instance of report lodged by the President of the Educational Institution, crime has been registered. Initially, a grievance was made about misappropriation on which three member committee has conducted inquiry. The inquiry report indicates the manner and mode of misappropriation. It is concluded that during the period from 2016 to 2019, false bills of purchase of furniture, laboratory equipment, food-grains were submitted and also shown some advance amount. The learned counsel appearing for applicant would primly canvassed that, reading of entire police

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report does not show a specific role of the applicant. In this regard, we have gone through the first information report dated 26.07.2020. The report specifies the fraudulent purchase of various articles during the period from 2016 to 2019. It is stated that though items have not been purchased, false bills have been submitted and thus, the amount has been misappropriated. However, the report does not disclose any specific role of the applicant. Besides general statement that the applicant alongwith co-accused committed a fraud, there is nothing against him. The inquiry report was also produced for our perusal. The report specifically states about the role of co-accused Ramteke, rather the inquiry revolves around the role of Ramteke which does not specify anything against the applicant.

6. The learned counsel appearing for applicant has also produced pre-arrest bail order showing that protection was granted to the applicant by concluding that inquiry report does not indicate role of applicant. Besides that our attention has been invited to the Educational Officer's letter dated 29.03.2019 authorizing the applicant and co-accused for jointly operating bank account of the School. Particularly emphasis is led on clarification that, in case of

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misappropriation, the headmaster alone would be responsible. Thus, prima facie it indicates that Headmaster is responsible for all financial activities. Besides the applicant being joint signatory, no specific role is ascribed. It reveals that neither show cause notices was issued to the applicant nor inquiry has been conducted against him. The prosecution has not shown any material from the investigation paper to indicate that the applicant did any positive act. Reply-affidavit (para 7) shows that the allegation about preparation of false bills are against co-accused only.

7. Having regard to the entire material, we are of the view that the FIR and the material collected during investigation do not specify the positive act of the applicant to infer his common intention. Rather the inquiry report, bills and the Police paper fingers towards the role of co-accused. Only because the applicant was joint signatory of the Bank transaction, liability cannot be fastened. Pertinent to note that as per directions of the Education Officer, the applicant has become the joint signatory to operate the bank account.

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8. In the above circumstances, in absence of specific material, continuation of prosecution against the applicant who has been superannuated would be abuse of the process of the Court. It is well settled that if the prosecution is unable to point out *prima facie* triable case, the continuation of prosecution would be an exercise in futility.

9. In view of above, the applicant has made out a case to quash the criminal prosecution. Hence, application is allowed. We hereby quash and set aside the FIR vide Crime No. 82/2020 registered with Police Station Palandur, Dist. Bhandara for the offence punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code against the applicant namely Naresh s/o Zituji Wanjari.

10. Application stands disposed of in above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)