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

CRIMINAL APPLICATION NO. 1550 OF 2023

Shabana Karim D/o Abdul Karim
Aged about 45, Occupation : Advocate,
R/o Glory Homes, Gorewada Ring Road, Nagpur, District Nagpur ...Applicant

// VERSUS //

1. State of Maharashtra, through Police Station Officer, Police Station Tumsar, District Bhandara
2. Vipin S/o Shamsingh Simar,
Aged about 36 years, Occupation Branch Manager,
R/o Shri Ram Nagar, Tumsar, Indian Overseas Bank, Tumsar, Dist. Bhandara
3. Indian Overseas Bank, through its Bank Manager, Branch at Tumsar, having its office at Shriram Nagar, Tumsar, Dist. Bhandara ... Non-applicants

Shri R.R.Vyas, Advocate for the applicants.
Shri M.K.Pathan, APP for the non-applicant no.1.

CORAM : SMT. VIBHA KANKANWADI, AND
MRS. VRUSHALI V. JOSHI, JJ.

DATED : 21st JUNE, 2024.

ORAL JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The present application has been filed, invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashing the Criminal Proceedings vide Regular Criminal Case No. 101 of 2021 pending before the learned Judicial Magistrate First Class, Tumsar for the offence punishable under Sections 420, 468, 471 read with Section 34 of Indian Penal Code which came to be filed on the basis of First Information Report (FIR) No. 167 of 2018 dated 10th April, 2018 at the behest of the non-applicant no.2 with the non-applicant no.1.

3. Heard Shri R.R.Vyas, learned counsel for the applicant and Shri M.K.Pathan, learned Additional Public Prosecutor for the non-applicant no.1.

4. It has been vehemently submitted on behalf of the applicant that the applicant is an advocate by profession. She was the panel advocate for Indian Overseas Bank. The said bank had asked her to submit the title report in respect of the property owned by one Sangeeta Shrikant Besekar and Shrikant Shrihari Besekar. In all search reports that was called upon were in respect of two properties. In respect of one property, the applicant had given her blank opinion upon the search that it is already mortgage, but as regards one property i.e City Survey No. 371, Sheet Nos. 24 and 25 situated at Manewada, it is stated that a false report was given that it is not mortgaged with any institution. However, when the loan which was then disbursed to said Besekars remained outstanding and public notice issued by Indian Overseas Bank, objection was raised by State Bank of India stating that the said property is already

mortgaged with them. The informant contended that the applicant has given false report stating that the said property is not mortgaged earlier. Learned advocate for the applicant submits that every effort was made by the applicant and all government documents were searched by her but there was no entry on any of those documents which can suggest that the property is already mortgage that too with the bank. The applicant had no intention to cheat the bank if such intention would have been than in another report in respect of the property owned by the same persons, she would not have given opinion that it is already mortgaged. The documents do not suggests that any forgery has been committed that too involving the applicant. Statement of witness Anshuman Premshankar Zha who was then Bank Manager has been taken under Section 161 of the Code of Criminal Procedure on 4th June, 2018. She also states that when the loan was disbursed they had not come across any such entry especially with Central Registry of Securitization Asset Reconstruction and Security Interest of India's (CERSAI) showing that the property is mortgaged with a bank. When the basic ingredients are not attracted it would be futile exercise to ask the applicant to face the trial and therefore, the First Information Report and secondly the chargesheet needs to be quashed and set aside.

5. Per contra, learned Additional Public Prosecutor strongly opposed the application and submitted that all the documents collected during the course of the investigation would certainly show that the applicant had not given search report after considering the appropriate documents. Investigation Officer has collected the documents from the

Indian Overseas Bank as well as the documents from the State Bank of India who had granted loan by taking mortgage of the disputed property. The said amount of loan taken from the State Bank of India has also not been repaid, therefore State Bank of India had moved the Debt Recovery Tribunal for recovery of loan amount and proceeded against the property. Inspite of these things in the impugned search reports submitted by the applicant, it is clearly mentioned that the property was not mortgage, this amounts to creation of forgery and therefore trial needs to be conducted.

6. At the outset for filing the case under Sections 420, 468 and 471 of Indian Penal Code, the prosecution will have to prove that there was intention on the part of the applicant to commit said crime. When it is admitted fact that search report was called from the applicant who was the panel advocate in respect of two properties hold by Besekars and on the basis of one report when it was informed that the property is mortgaged, the non-applicant-Bank had not disbursed the loan. However, as regards the present transaction, the report was submitted by the applicant that the said property is not mortgaged and therefore it appears that the amount of Rs.84,00,000/- were disbursed as loan to Sangeeta Besekar who was stated the property of M/s Shrishta Industries. The position of law is infact very much clear that the search report is taken yet the Bank would be at liberty to disburse the loan even by going against the search report. The purpose of search report is to see whether the property is mortgage or there are other encumbrance or legal hurdles for disbursing the loan amount. We made further elaborate it if the valuation of the property is much higher than the earlier loan and still it

would be for the second bank to consider the case for distribution of loan if it can be assured that in case of failure of the debtor than the property can be put to auction and the outstanding amount of both the banks or institution can be mitigated. In other words, the search reports filed by the panel advocate cannot be strictly binding or mandatory on the bank at the time of disbursement of loan.

7. Even if we consider it that much depends upon the search report at the time of disbursement of loan here in respect of two properties, the one report was given positively in favour of Besekars and another was against them and therefore it cannot be said that there was intention to cheat the bank since inception which is one of the ingredients of offence under Section 420 of Indian Penal Code.

8. The search report was based on the search of the title documents which are usually registered with the said Registrar Office and the impugned report would show that the documents between 2003 to 2015 cannot be considered. The documents along with the chargesheet do not clearly show that the mortgaged deed entered between State Bank of India and Besekars was ever reflected in the property registered card. The precautions were taken by the State Bank of India to make it known to the public at large that the particular property is mortgaged with it in view of the disbursement of loan to Besekars that was one of the documents on which the opinion would have made difference. It can be further seen that the applicant had deposited the necessary fees with the Sub-Registrar Office for searching the documents. When genuine efforts

are made it will have to be presumed that there was no intention on the part of the applicant to cheat the bank and there would not have been wrongful gain to the applicant by giving such kind of report. As the basic intention is lacking it would be futile exercise to ask the applicant to face the trial and therefore the application deserves to be allowed. Hence, the following order.

i. Criminal application stands allowed;

ii. Regular Criminal Case No. 101 of 2021 pending before the learned Judicial Magistrate First Class, Tumsar as against the present applicant Shabana Karim D/o Abdul Karim under Sections 420, 468, 471 read with Section 34 of Indian Penal Code stands quashed and set aside;

iii. In view of the entire proceedings quashed and set aside, there is no requirement of passing separate order in respect of quashment of First Information Report (FIR) No. 167 of 2018 dated 10th April, 2018 registered with Tumsar Police Station.

[MRS. VRUSHALI V. JOSHI, J.] [SMT. VIBHA KANKANWADI, J.]