2025:BHC-AUG:3904-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1119 OF 2023

Nanasaheb Bhagwat Raut,
Age 51 yrs., Occ. Agri.,
R/o Ghulewadi, Tq. Sangamner,
Dist. Ahmednagar.

… **Applicant**

… **Versus** …

1 The State of Maharashtra
Through Police Inspector,
Sangamner City Police Station,
Tq. Sangamner, Dist. Ahmednagar.

2 Nandkishor Namdeo Mhaske,
Age 40 yrs., Occ. Service,
R/o Abhinavnagar, Near Malpani Office,
Tq. Sangamner, Dist. Ahmednagar.

… **Respondents**

…

Mr. S.S. Dixit, Advocate for applicant

Mr. G.A. Kulkarni, APP for respondent No.1

Mr. P.P. Shahane, Advocate for respondent No.2

…

CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.

RESERVED ON : 13rd JANUARY, 2025

PRONOUNCED ON : 10th FEBRUARY, 2025

<u>ORDER</u> : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for quashment of First Information Report vide Crime No.113/2023 dated 05.02.2023 registered with Sangamner City Police Station, Tq. Sangamner, Dist. Ahmednagar, for the offence punishable under Section 406, 408, 420 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. S.S. Dixit for applicant, learned APP Mr. G.A. Kulkarni for respondent No.1 and learned Advocate Mr. P.P. Shahane for respondent No.2.

3 Learned Advocate for applicant submits that applicant has been made as accused No.13. Respondent No.2 is Manager of Maharashtra Gramin Bank, Branch Sangamner. It is stated that the bank had given gold loan to about 137 persons between 30.07.2020 to 13.01.2023. On 18.01.2023 they had appointed Panel of three persons for revaluation of gold taken in gold loan matter. At that time it was found that in 33 accounts the ornaments those have been given are fake, that is, not gold articles. Present applicant had taken gold loan of Rs.2,00,000/- on 11.02.2022 and in fact, he has repaid the said loan on 19.01.2023. He had deposited amount of

Rs.2,14,000/- on that day. Thereupon, the bank had issued certificate that loan is mitigated and articles which were pledged have been returned. Under the said circumstance, on the date of First Information Report i.e. 05.02.2023 there was no transaction remaining or gold loan account was not in operation. Under such circumstance, it would be unjust to ask the applicant to face the trial.

4 Respondent No.2 has filed affidavit-in-reply reiterating the same contents those are in First Information Report and has also produced on record the gold audit and revaluation report dated 18.01.2023 and the complaint that was made on 24.01.2023 to the Superintendent of Police. It is submitted on their behalf that merely because now the loan amount has been mitigated, that does not mean that no action can be taken against applicant. When he had taken the loan, at that time, he had given fake ornaments and this was in conspiracy with goldsmith on the panel of bank, who had certified that it was gold. Now, the said goldsmith, who had given such fake certificate i.e. proprietor Mr. Jagdish Shahane of Rajmani Jewellers had also been made as an accused. The bank was required to extend amount of Rs.68,94,000/- based upon certificates issued by said goldsmith, when he had the knowledge that ornaments which were given as security as such are fake. Learned Advocate appearing for respondent No.2 relies on the decision in

State of Odisha vs. Pratima Mohanty etc. [AIR 2022 SC 41], wherein it is held that the date for the offence under Section 420 of the Indian Penal Code would be the date when the cause of action arose. High Court is not required to enter into merits of the allegations and conduct a mini trial by weighing evidence in detail at the time of considering application under Section 482 of the Code of Criminal Procedure.

4.1 He further relies on the decision in **Central Bureau of Investigation vs. Jagjit Singh** [2013 AIR SCW 5719], wherein it has been held that accused with the aid of bank officers alleged to have secured loan on forged documents. In such case bank alone is not victim. Repayment of dues was not done by accused because of settlement between him and bank but it was as per the order of DRT and, therefore, quashing of proceedings on the ground of after settlement continuation of proceedings would not serve the purpose was not justified.

4.2 Further reliance has been placed on the decision in **State of Maharashtra Through CBI vs. Vikram Anantrai Doshi and others** [2014 AIR SCW 5567], wherein it is observed that defrauding of a bank is a social wrong and has immense societal impact. Merely because accused had repaid money and bank has issued no dues certificate is not sufficient for quashing the criminal proceedings.

4.3 He also relies on the decision in **Abhay Shantilal Jain and others vs. The State of Maharashtra and another** with companion matter decided by this Court in Criminal Application No.4744 of 2016 on 27.03.2017, which is on the similar line regarding exercise of powers under Section 482 of the Code of Criminal Procedure.

5 Learned APP relies on the decision in **State of Karnataka vs. M. Devendrappa and another** [AIR 2002 SC 671], wherein it is held that meticulous analysis of the case before trial to find out whether the case would end in conviction or acquittal is not necessary while considering an application under Section 482 of the Code of Criminal Procedure.

6 The fact which is not in dispute is that applicant had taken gold loan of Rs.2,00,000/- on 11.02.2022 from Maharashtra Gramin Bank, Branch Sangamner. It will have to be presumed that at the time of submitting application for grant of loan applicant would have exhausted the required procedure. Along with his application he had filed certificate of goldsmith, with whom the said bank had contract. Upon the certificate issued by said goldsmith that the property which would be pledged is gold article, then only the bank would have released the loan amount. From 11.02.2022 till

18.01.2023 there was no occasion for the bank to get the said article/s revaluated. The report, copy of which has been produced by respondent No.2, does not reveal as to which tests were conducted to check whether the article is gold article or not, but it is stated in the report that for 33 accounts the article/ornaments those were given are fake. Of course, the said goldsmith, who had issued the said certificate has been made as an accused in this case. Now, the fact remains is that in the present case applicant has repaid loan on 19.01.2023. It is not the case of respondent No.2 that present applicant got knowledge about report from some source and, therefore, in order to get rid of, he had deposited the said amount. Further, when on 18.01.2023 the concerned bank had the knowledge that the article which was pledged by applicant was fake, then why the bank had allowed him to deposit the amount and even if he has been allowed, why the bank should return the said article to the applicant, is a question ? In a sense, the muddemal itself has been returned by informant to accused. Now, except the said report, which does not say as to which test was conducted to revaluate the article, there is nothing. The ratio laid down in the decision relied by learned APP as well as learned Advocate for respondent No.2 cannot be denied at all, however, with its own acts the bank that is through its Manager – respondent No.2 has destroyed the evidence by giving it back to the applicant by stating that the loan has been mitigated. Under such circumstance, it would be unjust to ask the applicant to face the trial. We take this to be a fit case where the First Information Report needs to be quashed and set aside. Hence, following order.

ORDER

i) Criminal Application stands allowed.

ii) First Information Report vide Crime No.113/2023 dated 05.02.2023 registered with Sangamner City Police Station, Tq. Sangamner, Dist. Ahmednagar, for the offence punishable under Sections 406, 408, 420 of the Indian Penal Code, 1860 stands quashed and set aside as against applicant Nanasaheb Bhagwat Raut.

(ROHIT W. JOSHI, J.) **(SMT. VIBHA KANKANWADI, J.)**

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