



THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 1366 OF 2020

- 1] Shri Ramesh Gulabrao Kadam,
Aged about 59 years, Occ. Retired,
- 2] Sau. Rekha Ramesh Kadam,
Aged about 55 years, Occ. Household,
- 3] Ashwini Anand Jagtap (Nagpurkar),
Aged about 34 years, Occ. Household,

All R/o. Metikheda, Tah. Kalamb,
District Yavatmal.

... Applicants

Versus

- 1] The State of Maharashtra,
Through Police Station Officer,
Police Station, Malakoli, Tah. Loha,
District Nanded.
- 2] Bhimrao S/o Kishanrao Nagargoje,
Aged about 49 years, Occ. Private,
R/o. Malakoli, tah. Loha,
District Nanded.

... Respondents

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Ms. Amita D. Chate, Advocate for Applicants.

Mr. A. M. Phule, APP for Respondent No.1 / State.

Mr. Hamzakhan I. Pathan, Advocate for Respondent No.2.

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CORAM : **SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 20th February, 2025.

J U D G M E N T : (Per Sanjay A. Deshmukh, J.)

. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 This is an application under Section 482 of the Code of Criminal Procedure, 1973, for quashing of the proceedings bearing R.C.C. No.91 of 2020, pending in the Court of learned Judicial Magistrate First Class – 1, Loha, District Nanded, arising out of First Information Report (for short “FIR”) in Crime No.85 of 2020, dated 22nd April, 2020, registered with Malakoli Police Station, Taluka Loha, District Nanded, for the offences punishable under Sections 420, 419, 467, 468 and 471 read with 34 of the Indian Penal Code, 1960 (for short “the IPC”).

3 Applicant Nos.1 and 2 are the parents and applicant No.3 is the sister of co-accused Mahesh Kadam. The informant is an agriculturist as well as ex-serviceman, retired from the Army. His son Sachin Bhimrao Nagargoje was trying for joining the Assam Rifles. Sachin noticed an advertisement. Accordingly, he followed that process of joining in Assam Rifles. He went to Assam, but could not succeed in those tests. He came back. He received phone call from co-accused Mahesh Kadam (the son of applicant Nos.1 and 2).

Mahesh told Sachin that although Sachin failed to succeed in the Assam Rifles recruitment, Mahesh could still get Sachin recruited if he pays Rs.4,00,000/-. Mahesh told that he is the Captain in the Engineer Regiment. Mahesh convinced the informant and his son Sachin for paying the amount of Rs.4,00,000/-. On 7th September, 2017, Mahesh came to the house of informant at Malakoli and demanded that amount for joining the son of informant in the Assam Rifles. He assured that if he is not able to join the son of informant in the Assam Rifles, he will return that amount. That time, Mahesh said now pay Rs.2,00,000/- and after getting the appointment order, pay remaining amount of Rs.2,00,000/-. The informant collected some amount from his relatives and paid that amount to co-accused Mahesh in the presence of informant's brother Babu and others. Mahesh collected marks-memo of H.S.C., Transfer Certificate, Caste Certificate, Domicile Certificate, Non-Creamy Layer Certificate and passport-size photographs of Sachin. Mahesh assured that he will certainly join the son of informant in the Assam Rifles. In October 2017, Mahesh made phone call to the informant. The informant was called at Metikheda. The informant went there. That time, Mahesh handed over the appointment letter in the Assam Rifles dated 28th October, 2017, upon which there was signature of Deputy Commandant and also the seal of office. Mahesh demanded the

remaining amount of Rs.2,00,000/- and directed him to pay that amount. In December 2017, Mahesh demanded Rs.2,00,000/- and informed that informant's son's job in Assam Rifles is fully processed and completed. On 20th December, 2017, the informant alongwith his brother and others went to Metikheda. There the informant met with co-accused Mahesh (son of applicant Nos.1 and 2). That time, applicant Nos.1 to 3 were present. In their presence, Mahesh asked the informant as to whether Rs.2,00,000/- is brought ? That time, the informant paid that amount. Mahesh handed over the letter of appointment in the Assam Rifles in the name of the son of informant having seal and signature of officer. At that time, all these three applicants also helped co-accused Mahesh for counting the money. On 17th April, 2018, informant's son Sachin went for joining the duty alongwith Mahesh Kadam at Assam. When Sachin reached there, he told the informant that his training has been started. Sachin was sending the photographs of his Assam Rifles uniform on the WhatsApp. Thereafter, co-accused Mahesh Kadam also said to the informant that if any relative is willing to join in the Assam Rifles, send them with Rs.4,00,000/-. Seeing Sachin's photos in uniform, many villagers believed that he has been recruited. Therefore, they requested the informant to get their children recruited as well. In June 2018, Mahesh Kadam again came to the village of informant. Eight

persons met him for getting service in the Assam Rifles. From those eight persons, co-accused Mahesh collected Rs.16,00,000/- i.e. Rs.2,00,000/- per person, in the presence of the informant. Thereafter, again on 18th July, 2018, the remaining amount of Rs.16,00,000/- were paid to Mahesh Kadam in the presence of these applicants. That amount was counted by these applicants alongwith co-accused Mahesh. Mahesh had also given false and bogus appointment orders to those eight persons.

4 When the fact of cheating was revealed, the informant and others tried to contact co-accused Mahesh Kadam. However, his mobile handset was switched off. Therefore, they went to Metikheda to the village of Mahesh Kadam. At that time, the co-accused Mahesh said that he has also been cheated. He assured that he will get back that amount and return it to them. The informant frequently went there for getting that amount. Lastly, co-accused Mahesh Kadam threatened the informant and expelled from there. Therefore, the report was lodged that Mahesh Kadam had cheated for an amount of Rs.36,00,000/-.

5 The learned counsel for the applicants submitted that the applicants are falsely implicated in the crime. Only because applicant

Nos.1 and 2 are parents and applicant No.3 is sister of co-accused Mahesh Kadam, they are falsely implicated in the crime. Applicant No.1 is a retired Army man. He has no criminal antecedents. The other applicants have also no criminal antecedents. Applicant No.3 is married sister of co-accused Mahesh Kadam. If the applicants are compelled to face the trial, they will certainly suffer, having no connection with illegal act in the commission of said crime. She lastly prayed to allow the application by quashing the report and the charge-sheet.

6 The learned APP for the State strongly opposed the application and submitted that the applicants are involved in the serious crime. They have participated in the crime. They have counted lakhs of rupees and duped an amount of Rs.36,00,000/-. Their overt act is establishing from the report itself. He lastly prayed to reject the application.

7 The learned counsel for respondent No.2 also strongly opposed the application and submitted that the names of applicants alongwith their roles i.e. involvement in the said crime is *prima-facie* establishing from the report. They have counted that amount, which shows their involvement and common intention. Therefore, Section

34 of the IPC is invoked against the applicants alongwith Section 420 of the IPC. Huge amount of Rs.36,00,000/- is duped by the applicants and co-accused Mahesh Kadam. He submitted that considering the strong evidence against the applicants, the application deserves to be rejected.

8 We have perused the application, report and the charge-sheet.

9 A reference can be made to the judgment in the case of **CBI vs. Aryan Singh**, reported in, **2023 SCC Online SC 379**, in which the Honourable Supreme Court held that as under:-

“Para 10... As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial.”

10 The Honourable Supreme Court in the case of **Dharambeer Kumar Singh Vs. The State of Jharkhand and another**, reported in, **AIR 2024 SC 4499**, in paragraph No.18 held as under:-

“18. At the cost of repetition, we state that admittedly respondents are the beneficiaries and merely because

the appellant was an equal mischief player and/or a person having criminal antecedents at his credit by itself will not absolve respondents from the criminal liability as alleged against them. Least to say, **“Two wrongs do not make a right.”**”

11 In the report, informant stated in detail as to how the son of applicant Nos.1 and 2 and brother of applicant No.3 got confidence from the informant and other eight persons for joining in the Assam Rifles. When an amount of Rs.2,00,000/- was paid to the main accused Mahesh Kadam by the informant, it was counted by these three applicants. When the amount of Rs.2,00,000/- each (total Rs.16,00,000/-) was paid by the eight persons to co-accused Mahesh Kadam in his house, it was also counted by these applicants. The false and fabricated provisional selection letters and appointment letters in the Assam Rifles are part of the charge-sheet. From the cause title of the application, it appears that though applicant No.3 is married sister of main accused Mahesh Kadam, she is residing with her parents at village Metikheda, Taluka Kalamb, District Yavatmal. There are statements of witnesses supporting the informant's contentions in the report. On perusal of the entire charge-sheet, we are of the view that there is involvement of each of the applicants in the said crime. It is very serious crime of duping Rs.36,00,000/- by

fabricating false documents. Considering all the facts and circumstances of the case and the false and fabricated documents, we are of the view that no case is made out for exercising our powers under Section 482 of the Code of Criminal Procedure for quashing the proceedings. The application, therefore, deserves to be rejected. Hence, the following order:-

ORDER

- I. The application is rejected.
- II. Rule is discharged.

[SANJAY A. DESHMUKH, J.] [SMT. VIBHA KANKANWADI, J.]

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