2025:BHC-AUG:9660-DB

IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2358 OF 2023

Murlidhar S/o. Dattatraya Pawar
Age : 48 Years, Occu. : Advocate/Arbitrator
Shriram Transport Finance Company Ltd.,
Ahmednagar,
R/o. Gulmohar Road, Savedi,
Ahmednagar, Tq. & Dist. Ahmednagar .... **Applicant**

VERSUS

1. The State of Maharashtra
Through its Investigation Officer,
Shrigonda Police Station,
Tq. Shrigonda, Dist. Ahmednagar.

2. Sagan S/o. Sahebrao Lokhande
Age : 32 Years, Occu. : Agri.,
R/o. Shrigonda, Tq. Shrigonda,
Dist. Ahmednagar. .... **Respondents**

....

Advocate for Applicant : Mr. N.B. Narwade
APP for Respondent No.1-State : Mr. G.A. Kulkarni
Advocate for Respondent No.2 : Mr. Sachin S. Panale

....

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

Dated : 07th March 2025

ORDER [PER SANJAY A. DESHMUKH, J.] :-

1. This is an application for quashing the First Information Report (for short "the F.I.R.") vide C.R. No.0535 of 2023, registered

at Shrigonda Police Station, Dist. Ahmednagar on 02.06.2023, for the offences punishable under Sections 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code, 1860 (for short “the I.P.C.”).

2. Learned Advocate for the applicant pointed out the report lodged by respondent No.2/informant, in which he averred that he is an agriculturist and residing at Shrigonda, Tq. Shrigonda, Dist. Ahmedngar. In the year 2011, his neighbourer viz. Mr. Macchindra Dattatraya Shinde requested him to become his surety for purchasing Poclain (210) Machine and demanded his voter id card, photo, ration card and specimen signature form of his bank. Accordingly, he handed over the said documents to Mr. Macchindra Shinde. That time, Mr. Macchindra Shinde informed him that he cannot become a surety as he does not possess cheque book of nationalized bank, statement of bank account, pan card and 7/12 extract of the agricultural land. Therefore, he requested Mr. Macchindra Shinde to return back all these documents, but he, on this or that count, avoided to return the said documents.

3. The informant further averred that, in the year 2018, he submitted loan file to HDB Finance Company for purchasing Hyva of Tata Company. HDB Finance Company communicated him that his

CIBIL score is low, therefore, loan cannot be sanctioned. He made inquiry of his low CIBIL score and it was revealed that Shriram Transport Finance Company had shown him as a borrower and surety. However, he was neither made a surety to anybody nor he had taken any loan from Shriram Transport Finance Company.

4. The informant further averred that, in the year 2019, he received notice from Shriram Transport Finance Company Ltd., Branch Shrigonda through its Adv. D.D. Gayakwad and informed him that Rs.42,12,519/- and Rs.10,90,807/- are outstanding against him as a loan amount. He suspected some bogus loan transaction has been shown in his name. Therefore, he frequently inquired about it with Bank Manager Mr. Sachin Pawar, Shriram Transport Finance Company Ltd., Branch Shrigonda. Mr. Sachin Pawar told him that, in the year 2013, he had obtained the said loan amounts from Shriram Equipment Finance Company Ltd., Ahmednagar, for purchasing Hyundai Poclain (210) machine and its breaker. He also told him to pay the entire loan amount and on failure to pay the loan amount, legal action will be taken against him.

5. The informant further averred that, he had never taken any loan amount. However, Bank Manager Mr. Sachin Pawar and

other employees of Shriram Transport Finance Company Ltd., Branch Shrigonda frequently visited his house and forced him to pay the said loan amount. Therefore, he suffered mentally and his reputation in the vicinity has been lowered. That time, due to Covid-19 pandemic, all the money transactions were halted.

6. The informant further averred that, in the year 2022, Shriram Transport Finance Company Ltd. through its Arbitrator viz. Adv. Mr. M.D. Pawar i.e. the present applicant, sent him notice to pay outstanding loan amount of Rs.1,73,63,898/-. He was directed to remain present and file say in Arbitration Case No.147 of 2022. He sent reply notice to the applicant and asked him about the documents, on the basis of which he filed an Award No.147 of 2022. Though the said notice was received by RPAD, the applicant had not replied to him. He, therefore, visited him and asked him about the documents and Award. The applicant said to him that "he is an Arbitrator, he has protection of law and court, he will give an answer to him in the Court, no one can do anything to him". Even though no loan was taken, Award has been illegally passed by the alleged Arbitrator.

7. The informant further averred that, he again inquired with Branch Manager Mr. Sachin Pawar, Shriram Transport Finance

Company Ltd., Shrigonda and he informed that in the year 2013, the said loan was sanctioned and he told him to pay the outstanding loan amount. Thereafter, in the year 2022, he approached to the office of Shriram Equipment Finance Company Ltd., Ahmednagar and inquired with one senior officer and Mr. Dinesh Bihani. He said that one Sunita Macchindra Shinde, resident of Shrigonda had executed an agreement for purchasing Hyundai Poclain (210) machine and its breaker and he has been made a surety for it. The said finance company also showed him the file of that loan transaction. He learnt that, surety bond was executed in his name and all his documents viz. photo, voter identity card, specimen signature form, which was taken by Macchindra Shinde, were attached with the said loan file. The officers informed him that Sunita Shinde had not paid loan amount. Therefore, in the recovery procedure, he was shown as a bogus surety of Sunita Shinde. He did not receive any notice from Shriram Equipment Finance Company Ltd., Ahmednagar. He noticed that his false signatures are made as a surety during the sanctioning of the proposal of loan.

8. The informant further averred that, at that time, he requested branch manager Mr. Sachin Pawar to show him the file of said loan transaction. He informed that two loan transactions were

taken place in his name in the year 2013 and Sunita Shinde and Macchindra Shinde are surety for said loan i.e. one of Rs.29,35,000/- and another of Rs.8,50,000/- and told him to pay the outstanding loan amount of Rs.1,73,63,898/- immediately. However, he did not show him any document of the said loan transaction. He lastly stated that since 2018, he could not borrow any loan from any bank as he was shown as a bogus borrower and a bogus surety. Therefore, he suffered huge economic loss. Hence, he lodged the report against the applicant and others.

9. Learned Advocate for the applicant submitted that the applicant is falsely implicated in this crime. He is an Advocate and Arbitrator. It is not alleged that he had fabricated any document. He had only sent legal notice to the informant for Arbitration proceeding. He pointed out Section 42-B of The Arbitration and Conciliation Act, 1996, which protects the action taken by the Arbitrator in good faith. He further submitted that the applicant has not fabricated any document. He pointed out the documents of arbitration proceeding i.e. copy of appointment letter in the name of the applicant as an Arbitrator, copy of daily sheet along with Arbitration Case No.147 of 2022, copy of order dated 19.11.2022, passed in Miscellaneous Application No.01 of 2022.

10. Learned Advocate for the applicant further submitted that the applicant has been falsely implicated in this crime only because he sent legal notice to the informat. It is a dispute of civil nature. The applicant's role is limited and ingredients of any of the section invoked against him are not stated. He lastly prayed to quash the report against the applicant.

11. Learned APP for the State strongly opposed the application and submitted that the applicant is involved in the fabrication of the Arbitration Award. He had not given loan documents to the informant though he demanded. There is strong evidence against the applicant. The protection under Section 42-B of the Arbitration and Conciliation Act, 1996 is available if any action is taken in a good faith. There is no good faith in the action taken by the applicant. He is not entitled for such protection. He submitted that if such illegal activities on the part of the applicant are allowed to continue, there will be havoc in the society. It is lastly prayed to reject the application.

12. Learned Advocate for respondent No.2/informant submitted that Award was passed by the applicant as an Arbitrator when the informant sent notice to him by RPAD. The applicant did

not pay heed to the notice sent by the informant. This shows criminal intention of the applicant to commit offence for which he is prosecuted. The applicant is involved in the serious crime. In furtherance of common intention of other accused, he tried to dupe the informant in false case of loan by passing illegal Award against the applicant. His action are not in good faith. Therefore, he is not entitled for the benefit of Section 42-B of the Arbitration and Conciliation Act, 1996. It is lastly prayed to reject the application.

13. In the context of the case, following case laws are relevant :-

i) ***CBI vs. Aryan Singh, reported in 2023 SCC Online SC 379***, in which the Hon'ble Supreme Court held as follows :-

> *"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 of Cr.P.C., the Court is not required to conduct the mini trial."*

ii) ***Dharambeer Kumar Singh Vs. The State of Jharkhand and Another, AIR 2024 SC 4499.*** In para.18, the Hon'ble Supreme Could held as follows :-

> *"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"."*

14. We have perused the report and charge-sheet. The learned Advocate for the applicant pointed out the documents showing that the action of passing of Award by the applicant was in good faith. He pointed out that Shriram Transport Finance Company Ltd., Shrigonda has filed Arbitration Petition on 19.11.2022, before the applicant for cancellation of Award passed in Arbitration Case No.147 of 2022, dated 22.06.2022. Though there are allegations of fabrication of documents of loan and surety, it is not averred in the report that the applicant was one of the conspirator and fabricator of those documents of the loan transaction along with the other co-accused. The role of applicant as an Arbitrator comes at a later stage. He cannot have knowledge as to what had happened at the stage of obtaining of loan and which documents were allegedly created fraudulently. The F.I.R. does not disclose his role in fabrication of false and fabricated documents.

15. There are allegations against the other accused that they tried to dupe the informant by fabricating false documents. Section 42-B of the Arbitration and Conciliation Act, 1996 gives protection to the Arbitrator for the action taken in good faith. Therefore, taking into consideration the role of applicant as an Arbitrator, his actions are protected by law. The informant appears to have not challenged the Arbitration Award passed against him by the applicant on 22.06.2022. Now, the informant is attributing allegations of conspiracy against the applicant which is not sustainable as per law. We are, therefore, of the view that the applicant cannot be prosecuted for the alleged forgery and fabrication of false documents. There are fabricated and false documents for which the other accused are prosecuted. However, the applicant was an Arbitrator and he was not liable to pay that amount.

16. Considering all the facts and circumstances and reasons stated above, if the applicant is compelled to face the trial, it would certainly be an abuse of process of court. We are, therefore, inclined to allow the application by exercising our inherent powers under Section 482 of the Cr.P.C., for quashing the said F.I.R. as prayed, in the interest of justice to prevent the abuse of the process of Court. The application deserves to be allowed. Hence, the following order.

ORDER

I] The Application stands allowed.

II] The First Information Report vide C.R. No.0535 of 2023, registered at Shrigonda Police Station, Dist. Ahmednagar on 02.06.2023, for the offences punishable under Sections 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code, 1860 stands quashed as against the applicant.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asd