2025:BHC-AUG:19421-DB

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4034 OF 2024

Rekha Kashiram Ubale
Age: 45 years, Occu: Service,
R/o: Hedgewar Nagar, Kinwat,
Dist. Nanded. ...APPLICANT

VERSUS

1. The State of Maharashtra
Through Police Station Officer,
Chandanzira, Police Station, Jalna,
Tal, Dist. Jalna.

2. Mr. Nandkishor Uddhavrao Mane
Age: 35 years, Occu. Business,
R/o. Yogeshnagar, Gajanan Residency,
Chandanjeera, Dist. Jalna. ...RESPONDENTS

Ms. Aummaheshwari S. Jadhav, Advocate for the applicant
Mr. S.R. Wakale, APP for respondent No. 1-State
Mr. Nitin Bhavar Patil, Advocate for respondent No. 2
....

CORAM : NITIN B. SURYAWANSHI AND
SANDIPKUMAR C. MORE, JJ.

RESERVED ON : 15th JULY, 2025
PRONOUNCED ON: 25th JULY, 2025

ORDER : [PER NITIN B. SURYAWANSHI, J.]

1. By this application filed under Section 482 of Code of Criminal Procedure, applicant/Accused No. 2 seeks quashing of FIR No. 0241 of 2024 registered with Chandanzira Police Station, Jalna, under Sections 406, 420 read with 34 of the Indian Penal

Code and Section 3(1)(s) and 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Respondent No. 2/Informant lodged FIR in question alleging that he is business man, resident of Jalna. He used to visit office of District Industrial Center at Jalna regularly and therefore he got acquainted with husband of applicant Mr. Arvind Shivaji Bhande/Accused No. 1, who is working in the said office as Industrial Inspector. He assured respondent No. 2 that his project file would be sanctioned at the earliest. For the said purpose, Accused No. 1 demanded amount of Rs. 25 Lakhs. On 11.07.2021 respondent No. 2 along with his friend went to the house of accused wherein both the accused were present. Respondent No. 2 could accumulate Rs. 19 Lakhs, which he handed over to Accused No. 1. Both the accused counted the said amount. Applicant/Accused No. 2 kept the bag containing said amount in the cupboard. Thereafter, an amount of Rs. 51,000/- was paid by respondent No. 2 towards booking amount of the flat, booked in the name of both the accused. On 19.07.2021, Accused No. 1 asked him to deposit an amount of Rs. 80,000/- in his nephew Jay Suryawanshi’s account, which was deposited by the informant. Jay Suryawanshi brought tab of

Apple company and gave it to Accused No. 2. On 28.07.2021 towards part payment of flat, informant deposited Rs. 1,99,000/-, 8,000/- and 38,000/- by online transfer to the builder. Thereafter, cash amount of Rs. 15 Lakhs was demanded by Accused No. 1, which was given by informant to Accused No. 1 in presence of his friend Manohar Kasbe. Thereafter, on 31.07.2021 informant transferred an amount of Rs. 1,99,000/- towards flat in the builder's account. Accused No. 1 was assuring that informant's loan file would be cleared, but insisting that he has to pay more amount for giving it to the superior officer. Thereafter, again on 04.07.2021, Accused No. 1 told informant to send an amount of Rs. 1,81,000/- towards payment of flat in the builder's account. Accordingly, he transferred the said amount. On 17.08.2021, Accused No. 1 called on the phone of informant and asked him to deposit Rs. 20 Lakhs on the saving account of applicant. At that time, informant told them that his work is not done. Accused No. 1 angrily abused him and told him that if the amount is not paid to him then the informant should forget about the earlier money. Thereafter, again on 18.08.2021, Accused No. 1 asked the informant to transfer an amount of Rs. 19 Lakhs, which was transferred by informant in the joint account of accused.

On 17.10.2021, Accused No. 1 called informant on the occasion of his birthday and asked him to bring Rs. 20 Lakhs. Informant gifted one tola gold ring to Accused No. 1 and gave him amount of Rs. 17 Lakhs. Said amount was counted by Applicant/Accused No. 1. Informant was repeatedly asking about his loan proposal to Accused No. 1. He was telling informant that his file is pending with superior officer. Thereafter, Accused No. 1 started avoiding to accept calls of informant. In the month of March, informant told Accused No. 1 that if his work is not being done, the amount of Rs. 78,70,000/- paid by him should be returned to him. Accused No. 1 assured that his work will be done as early as possible. Thereafter on 21.03.2023, informant called Accused No. 1, he was asked to come to District Industrial Center Jalna. Informant along with Dattha Bhabhande went to the office of Accused No. 1. There Accused No. 1 threatened him that if he demands money, he will be cut into pieces. He also abused him in the name of caste. On the basis of these allegations, FIR in question came to be registered.

3. Heard learned advocate for the applicant, learned APP for State and learned advocate for the 2nd respondent.

4. Learned advocate for the applicant submits that

before filing FIR in question, respondent No. 2 has filed private complaint under Section 138 of Negotiable Instruments Act, on 03.08.2023, against Accused No. 1 for dishonor of cheque of Rs. 19 Lakhs. In the said complaint no allegations are made against applicant/Accused No. 2. She submits that transaction between informant and accused were of a civil nature and applicant has no concern with the same. Only with a view to pressurize Accused No. 1, name of applicant is falsely implicated in the present crime. By relying on ***State of Haryana and Others vs. Bhajan Lal and Others***[1], she submits that no case is made out against the applicant. Hence, FIR to the extent of applicant is liable to be quashed and set aside.

5. Learned APP and learned advocate for the 2nd respondent strenuously opposed the application stating that applicant has played active role in the present crime by counting the amount given by the informant to Accused No. 1 and by keeping it in the cupboard. The flat is booked in the joint name of Accused No. 1 and 2. Part amount is deposited in the joint account of both the accused. Therefore, applicant has played an active role in the present crime and there is sufficient material on record against her. Hence, application filed by applicant being

1 1992 SC (Cri) 426

merit less be dismissed.

6. With the assistance of learned advocate for the applicant, learned APP for the State and learned advocate for the 2nd respondent we have perused the application, documents annexed with the same and the charge sheet.

7. From the averments made in the FIR it is clear that informant on the assurance given by Accused No. 1 that his project file will be sanctioned at the earliest has paid amounts from time to time either to Accused No. 1 or at his instance to the builder or others and some times in the joint account of both the accused. It is also alleged that Accused No. 1 booked flat in the joint name of both the accused. It is also alleged that when the amounts were paid in cash to Accused No. 1, he along with the applicant counted the said amount and the applicant kept the amount in the cupboard. Except these bare allegations, there is nothing on record to show actual involvement of the applicant in the present crime.

8. Perusal of record reveals that FIR and the material collected during the investigation is bereft of even basic facts which are absolutely necessary for making out ingredients of offence under Sections 406, 420 read with 34 of IPC against

applicant. To make out a case for criminal breach of trust punishable under Section 406 of IPC, the essential ingredients which are required to be made out are; a) entrustment of property with a person (applicant), b) the person so entrusted, dishonestly misappropriated or coverts the property to his own use or dishonestly using or disposing of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged.

Even if the case of the 2nd respondent is accepted as it is, admittedly, entrustment is allegedly made by him with Accused No. 1. Therefore, no ingredients of criminal breach of trust are made out against the applicant in the FIR or in the charge sheet.

9. The allegations of dishonest intention since inception are made against Accused No. 1. There is nothing on record to show that the applicant with dishonest intention since inception has cheated the informant/Respondent No. 2. Learned APP and learned advocate for the 2nd respondent could not point out any material from the record showing involvement of the applicant in the present crime.

10. The allegations made in the FIR and material collected during the investigation, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out any case against the applicant. The criminal prosecution lodged against the applicant appears to be manifestly attended with malafide and same is instituted with an ulterior motive for wreaking vengeance on the Accused No. 1 and with a view to pressurize him. We are of the view that applicant's case falls under following categories of Bhajan Lal (supra):

> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

11. Applicant is a teacher by profession and has no concern with the transactions entered into by her husband. Merely because at the instance of Accused No. 1 informant has

deposited certain amount in the joint account of both the accused and flat is booked by Accused No. 1 in the joint name, does not by itself show that there was common intention on the part of applicant to cheat the informant.

12. Fact remains that present FIR is preceded by filing of private complaint under Section 138 of Negotiable Instruments Act by informant, against Accused No. 1. In the said complaint no involvement of the applicant whatsoever is alleged by the informant. Therefore, there appears merit in the contention of applicant that with a view to settle personal scores, malafide her name is involved in the present crime so as to pressurize Accused No. 1.

13. On appreciation of material placed on record we are of the prima facie view that the dispute between informant and accused No. 1 appears to be of civil nature and with a view to pressurize Accused No. 1, applicant is implicated in the present crime.

14. Admittedly, there are no allegations that the applicant has committed offence under the Atrocity Act. For the aforestated reasons, we are of the considered view that continuation of prosecution against the applicant is an abuse of

process of law and Court. Hence, the following order:

ORDER

(i) Criminal Application is allowed.

(ii) FIR No. 0241 of 2024, dated 05.06.2024 registered with Chandanzira Police Station, Jalna, under Sections 406, 420 read with 34 of the Indian Penal Code and Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is quashed and set aside to the extent of applicant.

(SANDIPKUMAR C. MORE, J.) (NITIN B. SURYAWANSHI, J.)