2025:BHC-AUG:11230-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3827 OF 2023

1) Gautam S/o Bhimrao Narwade,
Age-39 years, Occu:Business,
R/o-Dhanora Road, Rajiv Nagar,
Beed, Taluka and District-Beed,

2) Shantabai W/o Bhimrao Narwade,
Age-73 years, Occu:Housewife,
R/o-Dhanora Road, Rajiv Nagar,
Beed, Taluka and District-Beed.

...APPLICANTS

VERSUS

1) The State of Maharashtra,
Through the Police Station Officer,
Dindrud Police Station,
District-Beed,

2) Atul S/o Madhukar Thombare,
Age-43 years, Occu:Business,
R/o-Dindrud, Taluka-Majalgaon,
District-Beed.

...RESPONDENTS

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Mr. Nitin Bhavar Patil Advocate for Applicants.
Mr. G.A. Kulkarni, A.P.P. for Respondent No.1.
Mr. K.S. Solanke Advocate h/f. Mr. S.J. Naik Advocate for Respondent No.2.

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CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.

DATE : 3rd APRIL, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed under Section 482 of the Code of Criminal Procedure, for quashing the proceedings in R.C.C. No. 228 of 2021 pending before the learned Judicial Magistrate First Class, Majalgaon, District-Beed, arising out of the First Information Report (for short "the FIR") vide Crime No. 9 of 2021 registered with Dindrud Police Station, District-Beed on 2nd February 2021, for the offence punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Nitin Bhavar Patil for the applicants, learned APP Mr. G.A. Kulkarni for respondent No.1 and learned Advocate Mr. K.S. Solanke holding for Mr. S.J. Naik Advocate for respondent No.2. In order to cut short, it can be stated that the learned Advocates for respective parties have argued in support of their contentions.

3. Respondent No.2 in the FIR states that he is a permanent resident of village Dindrud, Taluka-Majalgaon, District-Beed. Applicant No.1 used to go to village Dindrud with one Dayanand Nirmal, resident of village Neknoor, Taluka and District-Beed, as

said Dayanand Nirmal's wife hails from Dindrud. That is how the informant came in contact with applicant No.1. Applicant No.1 introduced him as Zonal Manager of the State Bank of India. The informant had plan to raise a cotton industry by name, Chandrabhaga Cotton Industries Private Limited, Dindrud and therefore, for getting loan from the State Bank of India to the extent of Rupees Eleven Crores, he has collected all the documents. He had made discussion with applicant No.1 regarding the loan documents, as applicant No.1 had introduced him that he is the Zonal Manager of the State Bank of India. Applicant No.1 had told the informant that he should give all the documents after making signatures to him and applicant No.1 would approve the said loan. However, for the entire work, the informant will have to incur the expenditure to the extent of Rs.11,00,000/- (Rupees Eleven Lakhs), which he should pay to applicant No.1. Since the relationship between the informant and applicant No.1 was good, he agreed and kept faith on applicant No.1. Informant gave all the documents including the signatures on blank forms in respect of loan applications and gave it to applicant No.1. Applicant No.1 went to the house of informant on 10^{th} February 2018 and told him that he should transfer him the amount of Rs.11,00,000/- as early as possible, then he would process the loan proposal. The informant therefore, paid an amount of Rs.3,90,000/- in cash in presence of witness Uddhav Raghunath Kichame. Thereafter, as per the say of applicant No.1, the informant transferred an amount of Rs.2,00,000/- in the account of mother i.e. applicant No.2 by RTGS method on 14th February 2018. Then he had transferred in all Rs.7,90,000/- in the accounts of applicant No.1 and applicant No.2 at different places by 13th February 2019. Thus, according to the informant, he has paid in all Rs.11,00,000/- for sanction of his loan amount but still his loan proposal was never sanctioned. Therefore, when informant asked applicant No.1 to return his amount, applicant No.1 had given him two cheques. But upon presentation of those cheques, those were dishonoured. The informant, therefore, states that he has been cheated by both the applicants and they have misappropriated the amount which has been given by the informant.

4. The first and foremost fact to be noted is that the informant is a businessman, as he says his occupation as business. He cannot be equated with the layman and therefore, it is presumed that he has the knowledge as to how the loan proposal is required to be submitted, at which Bank it is required

to be submitted etc. The informant himself says that he believed in whatever applicant No.1 had represented before him. There cannot be blind faith without there being a cross-check to any such proposals. In fact demanding money for sanction of loan amounts to bribe and the informant ought not to have paid bribe to a bank official. The informant says that when ultimately he found that applicant No.1 is avoiding to meet him and give the updates of sanction of loan, upon inquiry he received the information that applicant No.1 is not serving as Zonal Manager with the Bank. In fact the informant ought to have made inquiry in the beginning itself. If the basic precautions are not taken, then it cannot be stated that such person cheats another.

5. The facts further show that after the informant realized that applicant No.1 is avoiding to give updates about the sanction of the loan and when the informant made an inquiry and came to know that applicant No.1 is not the Zonal Manager nor in the employment of the Bank, no FIR was lodged immediately at that time. Rather, he had then accepted two cheques from applicant No.1. One cheque was for Rs.5,00,000/- and another was for Rs.6,00,000/-. The informant says that applicant No.1 had given an assurance that those cheques would

be honoured. In this circumstance, in fact it amounts to waiver of the allegations for the fraud or misrepresentation or cheating for the acts till the acceptance of the cheques. If that waiver is there, then no offence can lie in respect of those allegations. In other words, the earlier contract between the informant and applicant No.1 had then taken up a different shape. The informant accepted the cheques as part of a legally enforceable debt or liability as per his contention as a part of the subsequent transaction or proposal. Now, after those two cheques were dishonoured, it appears that the informant has not lodged a complaint under Section 138 of the Negotiable Instruments Act. In fact, we have already clarified that the customers are not required to pay any amount for sanction of the loan by the bank in their favour and therefore, we have described that if any payment is made for the sanction of such loan amount, it would become a bribe, in a sense, it is not a legally recoverable amount. If that transaction itself is illegal, there is no question of cheating.

6. Now, during the course of the investigation, the investigating officer has recorded statements of witnesses including witness Uddhav Kichame, in whose presence part of

the amount was paid and in fact he is the bank employee. He states that he is serving in Chandrabhaga Urban Multistate Co-operative Credit Society Limited, Dindrud. He has not stated in his statement, as to why he has not stopped the informant from transferring any amount when the informant, who would be the customer seeking loan, was not supposed to pay any amount for clearance of the loan proposal by the Bank. Even if he has given the said statement under Section 161 of the Code of Criminal Procedure supporting the prosecution, even prima facie it is unacceptable. Rather, the informant had requested this witness i.e. Uddhav Kichame to send amount of Rs.2,00,000/- to applicant No.1 from his account and accordingly he had given that amount. Now, this is transaction within transaction. Said witness Uddhav Kichame, who himself is a bank employee, cannot be said to be the party who would give bribe to another bank employee (we are presuming that till that date the informant was under the impression that applicant No.1 was employed as Zonal Manager of the Bank).

7. Another witness is Shaikh Firoj Shaikh Usman, who was present at the time when informant had allegedly given cash of Rs.3,90,000/- to applicant No.1. Again, at the cost of repetition

we would say that though the witnesses are saying that the informant had given amount of Rs.11,00,000/- to applicant No.1, yet it can be straightway stated that it was not a legal transaction and therefore, for illegal transaction there cannot be a cheating. Hence, prima facie no offence can be said to have been made out.

8. Another aspect is that, as regards applicant No.2 is concerned, she is mother of applicant No.1 and appears to be illiterate lady about 70 years of age. Merely because some amount was said to be transferred in her account, it cannot be said that she is the part of incident of alleged cheating.

9. Therefore, this is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure, as it would be unjust to ask the applicants to face the trial. Hence, we pass following order:-

O R D E R

(I) The Application stands allowed.

(II) The proceedings in R.C.C. No. 228 of 2021, pending before the learned Judicial Magistrate First

Class, Majalgaon, District-Beed, arising out of the First Information Report vide Crime No. 9 of 2021 registered with Dindrud Police Station, District-Beed on 2nd February 2021, for the offence punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code, stands quashed and set aside as against applicant Nos. 1 and 2 i.e. - 1) Gautam S/o Bhimrao Narwade and 2) Shantabai W/o Bhimrao Narwade.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/APR25