



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4313 OF 2022

Gajanan Jalbarao Gudmalwar,
Age 37 yrs., Occ. Business,
R/o Darvesh Nagar, Burud Galli,
Hingoli Naka, Tq. & Dist. Nanded.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through it's Investigating Officer,
Police Station, Nanded (Rural),
Tq. & Dist. Nanded.
- 2 Sayyed Ikramulla Hashmi s/o
Sayyed Habib Hashmi,
Age 46 yrs., Occ. Driver,
R/o 8-4-549/59, Netaji Nagar,
Erangadda, Hyderabad – 500 018.

... Respondents

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Mr. A.D. Hande, Advocate for applicant

Mrs. R.P. Gour, APP for respondent No.1

Respondent No.2 - Party-in-Person

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

RESERVED ON : 06th MARCH, 2025

PRONOUNCED ON : 18th MARCH, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashment of proceedings in Regular Criminal Case No.295/2019 pending before learned Chief Judicial Magistrate, Nanded arising out of First Information Report vide Crime No.147/2015 dated 11.06.2015 registered with Police Station, Nanded (Rural), Tq. & Dist. Nanded, for the offence punishable under Sections 379, 411, 420, 465 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. A.D. Hande for applicant and learned APP Mrs. R.P. Gour for respondent No.2.

3 Learned Advocate for applicant has taken us through First Information Report and charge sheet. He submits that First Information Report was against unknown person. Informant was the driver by profession and he was hired by one Rajesh Bajranglal Soni from Secunderabad, Telangana for driving his Mahindra SUV 500 car. They had come to Nanded around 1.30 p.m. on 10.06.2015, as owner Mr. Soni was to attend marriage ceremony of daughter of his relative. At night time informant was standing near the car by parking it on the road near the wedding venue, at that time, one person had talked to him and offered him to take cold drink with him.

Informant then took the car and they both went to a place where that person gave him amount and asked him to bring cold drink. When informant was purchasing cold drink, that person took away the car. Therefore, the offence came to be registered initially under Section 379 of the Indian Penal Code. The prosecution has come with a case that later on when the vehicle was seized, it's number plate was changed. It was even got registered with Maharashtra RTO and then it is stated that present applicant had played a role. There are no documents showing involvement of present applicant in the matter. Merely on the basis of statements by co-accused applicant cannot be allowed to face the trial. Even registration of another offence against applicant with Nagpur Police cannot be the ground to tag him with this offence. Therefore, this is a fit case for exercise of powers under Section 482 of the Code of Criminal Procedure.

4 Per contra, learned APP has strongly opposed the application. It appears that respondent No.2 was served and on one occasion he appeared in person; yet, thereafter he was absent. Learned APP submits that involvement of present applicant is clear. In fact, present applicant was absconding for about six years and thereafter he came to be arrested and supplementary charge sheet has been filed against him on 24.07.2023. Co-accused is still absconding. Involvement of other accused persons is also clear. Applicant is

running Sakshi Motor Driving School at Bhagya Nagar, Nanded. Search of his driving school was taken and many objectionable documents were found. Important witnesses by name Vijay Tirankar and Gajanan Shinde have stated that when vehicle was transferred or registered as MH 26-S-1539, the present applicant had acted as person having authority and, therefore, this cannot be the fit case to exercise powers under Section 482 of the Code of Criminal Procedure and now the charge sheet is filed under Section 379, 411, 420, 465 read with Section 34 of the Indian Penal Code and additional Sections those are invoked are 403, 406, 420, 471, 120-B read with Section 34 of the Indian Penal Code.

5 We fully agree with the submission on behalf of learned APP. First of all, first charge sheet that was filed on 01.04.2019 showed that present applicant is absconding, he came to be arrested after about six years and another accused Amit Pande was also arrested at that time. An absconding person cannot seek relief under Section 482 of the Code of Criminal Procedure.

6 Now, as regards the connection of present applicant with crime is concerned, there are statements of witnesses. The car which was stolen was bearing No.AP-10-BC-2021 and the car which has been seized is MH 26-S-1539, however, the chassis number is same. At the time of registration of car

with Nanded RTO, documents have been produced and employees who were working at that time have stated that present applicant has acted as Agent. Objectionable articles were found in the search of Motor Driving School run by applicant. There might be a fact that those documents were also in connection with another crime. But, certainly, when there is a role attributed to applicant, we do not take this to be a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. He has to be tried with other accused persons against whom the charge sheet is filed and they have been arrested and/or released on bail also. Application, therefore, stands rejected.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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