



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Application (APL) No.337/2024

Pradip V State of Maharashtra thr PSO PS Karanja and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Y. Bhelande, Advocate for applicant.
Ms A. Sharma Advocate (appointed) for NA no.2.
Mrs. Deshmukh, APP for NA no.1.

CORAM : Nitin B. Suryawanshi &
Pravin S. Patil, JJ.

DATE : 03-03-2025.

By this application filed under Section 482 of the Code of Criminal Procedure, applicant seeks quashing of chargesheet in R.C.C. No.40/2024 pending before learned JMFC, Karanja arising out of Crime No.730/2023 registered with Police Station Karanja for offence punishable under Sections 395, 397, 411, 412, 120-B of the Indian Penal Code.

ii. Non-applicant no.2 lodged a report on 25-12-2023 alleging that in the night at about 3.30 am, Narayandasji Paliwal along with his wife Hari Kumari and son Gopal came to him. Gopal was in injured condition. His clothes were blood stained. His uncle disclosed that they went to their farm house at Wathoda Shiwar on 23-12-2023. In the night of 25-12-2023 at about 12.00 to 12.30 pm six unknown persons robbed them by pointing knives and demanded money and ornaments. When Gopal tried to intervene one unknown

person assaulted him by knife on right side of the chest. One person forcibly snatched Mangalsutra and diamond tops from his wife. Those persons also snatched three Cell Phones and locked them inside the firm house. While leaving they also took away 55 bags of Soybean. Non-applicant no.2 thereafter, brought them to Government hospital, Karanja. Doctor gave primary aid to Gopal and referred him to Nagpur. Thereafter, his maternal uncle's wife and Gopal went to Nagpur and non-applicant no.2 lodged FIR. On the basis of FIR Crime No.0730/2023 was registered with Karnaja Police Station, District Wardha for offences under Section 395 and 397 of the Indian Penal Code.

It appears that during the course investigation one of the accused Deepak Pawar disclosed that he sold Mangalsutra and Diamond tops to the applicant. After recording the statement of Deepak Pawar, applicant came to be arrested and was remanded to Police custody. However, nothing was recovered from him. During investigation seven accused persons were arrested and Cell Phones, weapon allegedly used in crime, 55 bags of Soybean were recovered from the other accused persons. On completion of investigation chargesheet was filed on 03-05-2024 in the Court of JMFC Karnaja (Gha). Applicant is named as accused no.7 in the chargesheet and the

case is numbered as mentioned above. Applicant seeks quashing of the said proceeding.

iii. Heard learned Advocate for applicant, learned APP for State and learned Advocate for non-applicant no.2. Perused the chargesheet.

iv. In the entire chargesheet, there is absolutely no material to connect the applicant with the alleged crime. Admittedly, it is not the case of the prosecution that applicant has participated in the robbery along with co-accused. Applicant's name is involved in the present crime on the basis of statement of co-accused Deepak Pawar, who has stated that he sold the stolen Bentex Mangalsutra and Diamond tops to the applicant. It is settled legal position that statement of co-accused is not admissible against the other accused persons. To prove the charge under Section 411 of IPC, it is necessary to prove *mens rea* on the part of the accused. There has to be material on record to show that applicant had reason to believe that property allegedly purchased by him was stolen property and he has dishonestly received the same. All the ingredients of Sections 411 and 412 of IPC are conspicuously absent in the entire chargesheet. Applicant cannot be prosecuted on the basis of inadmissible confession of the co-accused. In absence of recovery from applicant, there is absolutely no material to frame charge against the applicant. Continuation of

prosecution against the applicant is therefore an abuse of process of law and Court.

v. In the aforestated reasons, application is allowed. Proceedings of R.C.C. No.40/2024 pending before learned JMFC, Karanja arising out of Crime No.730/2023 registered with Police Station Karanja for offence punishable under Sections 395, 397, 411, 412, 120-B of the Indian Penal Code are hereby quashed and set aside.

vi. Fees of learned Advocate appointed for non-applicant no.2 be paid as per schedule within a period of four weeks from the date of uploading of this order.

(Pravin S. Patil, J.)

(Nitin B. Suryawanshi, J.)