

Bombay High Court

Vitthal S/O. Tukaram Gorane vs The State Of Maharashtra And Anr on 17 November, 2017

Bench: S.S. Shinde

Cri apln 4217-17

1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4217 OF 2017

Vitthal S/o Tukaram Gorane
Age 38 Years, Occu : Agriculture
& journalism, R/o Ward No.1,
Gondhavani Road, Near water tank
Shrirampur, Dist.Ahmednagar .. APPLICANT

VERSUS

- 1] The State of Maharashtra
(Notice to be served through the Office of
APP High Court of Judicature
Bench at Aurangabad]
- 2] Vaibhav S/o Subhash Limkar
Age 38 years, Occu-Service,
R/o Northern Branch, Jawarhar
area, Opp.to Ganpati Mandir
Ward no.7, Shrirampur,
Dist.Ahmednagar. .. RESPONDENTS

Mr.Shaikh Mazhar A. Jahagirdar, Advocate for applicant.
Mr.Kagne, APP for Respondent No.1/State.
Respondent No.2 served.

CORAM : S.S.SHINDE &
MANGESH S. PATIL, JJ.

RESERVED ON : 9/11/ 2017.
PRONOUNCED ON :17/11/2017.

JUDGMENT (PER MANGESH S. PATIL,J.) :

Rule. Rule is made returnable forthwith. With the consent of the parties, heard finally.

Cri apln 4217-17 2] The applicant who has been arraigned as accused no.6 in Crime No.I-102/2016 registered with Shrirampur City Police Station, Dist.Ahmednagar on 16/4/2006 for the offences punishable under Sections 379, 411 r.w. 34 of IPC and the consequent prosecution launched against

him by filing charge sheet before the Court of JMFC, Shrirampur, Dist. Ahmednagar is invoking inherent powers of this Court under Section 482 of Cr.P.C., with following directions in Clauses B and E of the prayer clauses :

"B] The charge sheet arising out of C.R.No.I 102/2016 registered with Shrirampur City Police Station, Shrirampur District Ahmednagar dated 16-04-2016 for the offences punishable under section 379, 411 read with 334 of Indian Penal Code may kindly be quashed and set aside.

E] Direction may kindly be issued to initiate inquiry against the police personnel's who were involved in the case and consequently criminal prosecution be launched against them by issuing writ of Mandamus or any other writ of like nature"

3] According to the learned Advocate for the applicant, there is absolutely no iota of material collected by the investigating officer to implicate the applicant under Section 411 of IPC for receiving stolen property. According to the learned Advocate, the applicant has been revengefully implicated since he tried to trap the police officers being a journalist by lodging complaint Cri apln 4217-17 against them with the Anti Corruption Bureau (ACB). Applying principles laid down in the case of State of Haryana V/s Bhajanlal; AIR 1992 S.C. 604, the allegations against the applicant are inherently improbable and his implication is prompted by mala fides. The only circumstance against him is alleged recovery of meager quantity of gold beads and the disclosure of the co-accused which is insufficient to implicate him in the crime.

4] The learned APP strongly supported the allegations and justified filing of the FIR and consequential Charge-sheet.

5] Respondent no.2 is the original complainant who has been duly served but has not put in appearance. On 16/4/2016, he lodged FIR with the allegation that on the previous day in the evening when he alongwith his wife and sons was watching a procession, some unknown persons stole gold ornaments and cash of Rs.3130/- from the purse of his wife, total worth Rs.51630/-. On the basis of such complaint, offence was registered and the investigation was started. It is the prosecution case that during the course of investigation, it was transpired that the accused 1 to 3 had committed theft, whereas, the accused no.3 to 6 including present applicant had received some of the gold ornaments knowing well that it was stolen property. The accused no.1 made a disclosure under Section 27 of the Indian Evidence Act and some ornaments were recovered and seized under a panchanama. Similarly, accused no.4 to 6 also allegedly confessed and discovered ornaments received by them. Even the present applicant is Cri apln 4217-17 alleged to have discovered 4 gm. of gold ornaments under Section 27 of the Indian Evidence Act which were seized under a panchanama. This is how the present applicant has been implicated in the crime and is being tried for the offence punishable under Section 411 of IPC.

6] The material discussed hereinabove, cannot be said to be worthless. It is not that the applicant is being implicated solely on the basis of a confession of a co-accused. In fact, even the applicant himself has discovered some of the stolen property. If this is so, it would not be appropriate to

discard this piece of evidence and set him at liberty by stalling the ongoing trial. It is pertinent to note that the applicant has been arrested on 17/3/2017 but the present application has been moved on 27/7/2017 that too after filing of the charge sheet. In our view, it is certainly too late in the day to raise any issue and seek quashment of the criminal prosecution. The charge sheet has already been submitted and we find no justifiable reason to stall it.

7] The version of the applicant that he is being falsely implicated can only be established at a full fledged trial and his version that he is being falsely implicated since he tried to approach ACB against police, cannot be looked into at this juncture.

8] Thus, even by applying the principles laid down in the case of Bhajanlal (supra), instant matter does not fall into any of Cri apln 4217-17 these categories and we find no merit in the application.

9] The application is rejected. Rule is discharged.

(MANGESH S. PATIL, J.)

(S.S.SHINDE , J.)

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